

REDACTED-FOR PUBLIC INSPECTION

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Applications of)

NORTHSTAR WIRELESS, LLC)

File Number 0006670613

File Number _____

For New Licenses in the 1695-1710 MHz, and)
1755-1780 MHz and 2155-2180 MHz Bands)
_____)

Report No. AUC-97 (Auction 97)

To: Chief, Wireless Telecommunications Bureau

**NORTHSTAR WIRELESS, LLC
SUBMISSION ON REMAND**

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SUMMARY

Northstar Wireless, LLC (“Northstar”) confirms that it has renegotiated its agreements with subsidiaries of DISH Network Corporation (“DISH”) and submits the required documentation demonstrating that Northstar qualifies for the very small business bidding credit that it sought in *Auction 97*. Having been denied the opportunity to discuss specific concerns and changes with the Commission, Northstar and DISH entered into modifications to certain of their transaction agreements. Northstar and DISH made these changes based principally on the Commission’s analysis in the *Northstar MO&O* (as defined herein) and, for additional guidance, Northstar and DISH looked to the successful applications of two winning bidders in Auction 97 that were awarded bidding credits *after* the Commission released the *Northstar MO&O*.

The modifications made by Northstar and DISH are comprehensive. Among other things, Northstar and DISH have:

- Terminated the Management Services Agreement;
- Terminated the Trademark License Agreement;
- Reduced the amount of Northstar’s indebtedness to DISH by converting all but \$500 million of indebtedness to DISH into non-voting, non-convertible, non-participating preferred equity, repayment of which is not required until there is a liquidation or deemed liquidation event;
- Applied to that preferred equity an 8 percent dividend rate going forward, which is lower than the prior interest rate on the debt;
- Replaced DISH’s investor protection rights with the six types of rights identified in *Baker Creek* as permissible;
- Removed restrictions on Northstar’s ability to acquire additional spectrum;
- Eliminated Northstar’s obligation to consult with DISH regarding budgets and business plans;
- Removed the requirement that Northstar’s systems be interoperable with those of DISH;
- Lowered the annual interest rate on the remaining DISH loan from 12 percent to 6 percent going forward;

- Eliminated DISH loan prepayment obligations and required interest payments, such that accrued interest is not payable until the loan maturity date, which has been extended from 7 years to 10 years;
- Eliminated the excess cash flow recapture provision;
- Eliminated the prohibition on Northstar owning real property;
- Reduced from 10 years to 5 years the period during which Northstar Manager may not sell its ownership interests in Northstar Spectrum without DISH's consent;
- Removed DISH's right-of-first-refusal on sales of Northstar Manager's ownership interests in Northstar Spectrum and on license sales, and removed DISH's tag-along rights on the sale of Northstar Manager's ownership interests in Northstar Spectrum;
- Eliminated monetary limits on equipment financing and third-party unsecured debt;
- Clarified that the management fee is not a salary, or any type of cap on Northstar Manager's ability to hire or engage additional resources, including personnel, for network construction and operations;
- Increased from 30 days to 90 days the duration of the put window period after year five;
- Added a second put window after year six;
- Added a window after year seven for a fair market value appraisal; and
- Expanded Northstar's right to initiate a public offering.

These comprehensive changes address the Commission's stated concerns and warrant the grant of the bidding credits for which Northstar applied.

This demonstration is bolstered by a comparison of the revised agreements discussed here with the transaction terms of two Auction 97 designated entities—2014 AWS Spectrum Bidco Corporation ("Spectrum Bidco") and Advantage Spectrum, LP ("Advantage Spectrum")—who were awarded licenses and bidding credits by the Wireless Telecommunications Bureau *after* the *Northstar MO&O* was released by the Commission. The revised Northstar and DISH agreements meet or exceed the standards established in the cases of these subsequently successful applications.

As examples, the new interest rate on Northstar's debt is lower than that applicable to Spectrum Bidco or Advantage Spectrum, and Spectrum Bidco and Advantage Spectrum have materially greater supermajority approval obligations than Northstar does now. Northstar need not

consult with DISH in developing its business plans or budgets or get approval to deviate from them. Spectrum Bidco and Advantage Spectrum must consult with their strategic investors or get approval for deviations. Northstar and DISH have removed DISH's right-of-first-refusal and tag-along on sales of Northstar's ownership interests. Advantage Spectrum is subject to both protections for its strategic investor. The structure and timing of the Advantage Spectrum put and appraisal rights are essentially identical to those available now to Northstar; but, unlike Northstar, neither Spectrum Bidco nor Advantage Spectrum have a public offering right. In short, Spectrum Bidco and Advantage Spectrum were awarded bidding credits after the release of the *Northstar MO&O*, and this comparison demonstrates that Northstar should also qualify for bidding credits.

Finally, the Commission's previous discussion of the parties' bidding behavior throughout the auction is not relevant to the Commission's current analysis of whether the parties have cured what it identified as DISH's *de facto* control over Northstar. The D.C. Circuit was fully aware of the Commission's stated concerns regarding the parties' bidding conduct and it nevertheless remanded the *Northstar MO&O* to allow Northstar to negotiate a cure. The Court's remand coupled with the operation of Section 402(h) of the Communications Act render the parties' bidding conduct irrelevant to the question currently before the Commission: whether the amendments to the parties' transactional agreements cure what the Commission identified as DISH's *de facto* control of Northstar. They do, and that should be the Commission's conclusion here.

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To: Chief, Wireless Telecommunications Bureau

NORTHSTAR WIRELESS, LLC
SUBMISSION ON REMAND

Northstar Wireless, LLC (“Northstar”),¹ by its attorneys and pursuant to the *Remand Order* in the captioned proceeding,² confirms that it has renegotiated its agreements with subsidiaries of DISH Network Corporation (“DISH”)³ and submits the required documentation

¹ Northstar Spectrum, LLC (“Northstar Spectrum”) holds 100 percent of member interests in and is the sole manager of Northstar. Northstar Manager, LLC (“Northstar Manager”) holds 15 percent of common member interests in and is the sole manager of Northstar Spectrum. Together with Northstar, these entities will be referred to herein as Northstar unless the context requires more detail.

² See *Northstar Wireless, LLC, SNR Wireless LicenseCo, LLC, Order on Remand*, 33 FCC Rcd 231, 232 (WTB 2018) (“*Remand Order*”). See also *Northstar Wireless, LLC, SNR Wireless LicenseCo, LLC, Applications for New Licenses in the 1695-1710 MHz, and 1755-1780 MHz and 2155-2180 MHz Bands, Memorandum Opinion and Order*, 30 FCC Rcd 8887 (2015) (“*Northstar MO&O*”). Notwithstanding the renegotiated agreements submitted to the Commission and described here, Northstar believes that the terms and conditions of the agreements addressed by the Commission in the *Northstar MO&O* did not give DISH *de facto* control of and/or a controlling interest in Northstar.

³ American AWS-3 Wireless II L.L.C. (“American II”) holds 85 percent of common member interests in and 100 percent of preferred member interests in Northstar Spectrum. American II is a wholly-owned indirect subsidiary of DISH. American II and DISH will be referred to herein as DISH unless the context requires more detail.

demonstrating that Northstar qualifies for the very small business bidding credit that it sought in *Auction 97*. Northstar makes this submission without prejudice to its Joint Application for Review of the *Remand Order*, which remains pending.⁴ Northstar continues to stand ready to negotiate appropriate terms with the Commission, pursuant to the D.C. Circuit’s instructions on remand. But, in the absence of such guidance from the Commission, Northstar has agreed to these modifications pursuant to the instructions in the *Remand Order*.⁵

I. INTRODUCTION

The D.C. Circuit remanded this matter to the Commission, directing the agency “to give [Northstar] an opportunity to seek to negotiate a cure for the *de facto* control the [Commission] found that DISH exercises” over it.⁶ The Wireless Telecommunications Bureau (“Bureau”) subsequently issued the *Remand Order*, giving Northstar the opportunity to submit amendments to the agreements and demonstrate that Northstar qualifies for the very small business bidding credit that it sought in *Auction 97*.⁷ After comments, Northstar and DISH will have another opportunity to amend their agreements to resolve any material issues raised in the comments and

⁴ See also Letter to Mark F. Dever, Counsel to Northstar Wireless, LLC from Thomas M. Johnson, Jr., General Counsel, Federal Communications Commission, FCC ULS File No. 0006670613, at 1 (Mar. 20, 2018). Northstar has also filed with the Supreme Court of the United States a petition for a writ of *certiorari* to review the decision of the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) related to the appeal of the *Northstar MO&O*. See *SNR Wireless LicenseCo, LLC v. FCC*, 868 F.3d 1021 (D.C. Cir. 2017) (“*SNR*”), *petition for cert. filed*, 86 U.S.L.W. 3419 (U.S. Jan. 26, 2018) (No. 17-1058). Northstar makes this submission without prejudice to that petition.

⁵ According to the *Remand Order*, the record for this remand proceeding “will encompass both ULS filings (i.e., the record for the original ULS filing (ULS File No. 0006670613 for Northstar . . .) and the filings associated with the new ULS file number made pursuant to these procedures).” *Remand Order*, 33 FCC Rcd at 232 n.12. This Submission on Remand is being filed in the original Northstar ULS File Number (0006670613) and as an APPENDIX to EXHIBIT D to the new Northstar Form 601 filing made pursuant to the remand procedures.

⁶ *SNR*, 868 F.3d at 1025.

⁷ *Remand Order*, 33 FCC Rcd at 232.

there will be another round of notice and comment regarding any such additional changes.⁸ The Bureau will then refer the matter to the Commission to determine whether Northstar qualifies for the bidding credits.⁹

Having been denied the opportunity to discuss specific concerns and changes with the Commission, Northstar and DISH entered into modifications to certain of their transaction agreements.¹⁰ In the absence of Commission input on the weight and significance of its various concerns regarding *de facto* control, Northstar and DISH made these changes based principally on the Commission's analysis in the *Northstar MO&O*. For additional guidance, Northstar and

⁸ *Id.* at 233-34.

⁹ *Id.* at 234.

¹⁰ Since the release of the *Remand Order*, Northstar and DISH have entered into the following agreements: (a) Second Amended and Restated Limited Liability Company Agreement of Northstar Spectrum, LLC, entered into as of March 31, 2018, by and between Northstar Manager, LLC and American AWS-3 Wireless II L.L.C. ("Second Amended Northstar Agreement"); (b) Third Amended and Restated Limited Liability Company Agreement of Northstar Spectrum, LLC, entered into as of June 7, 2018, by and between Northstar Manager, LLC and American AWS-3 Wireless II L.L.C. ("Third Amended Northstar Agreement"); (c) Second Amended and Restated Credit Agreement, entered into as of March 31, 2018, by and among American II, Northstar Wireless, and Northstar ("Second Amended Credit Agreement"); (d) Third Amended and Restated Credit Agreement, entered into as of June 7, 2018, by and among American II, Northstar Wireless, and Northstar ("Third Amended Credit Agreement"); (e) Termination of Management Services Agreement, entered into as of March 31, 2018, between American II and Northstar Wireless ("MSA Termination"); (f) Termination of Trademark License Agreement, entered into as of March 31, 2018, between DISH and Northstar Wireless ("TLA Termination"); (g) Amended and Restated Interest Purchase Agreement, entered into as of March 31, 2018, by and among Northstar Manager, Northstar Wireless, and American II ("Amended Interest Purchase Agreement"); (h) Second Amended and Restated Interest Purchase Agreement, entered into as of June 7, 2018, by and among Northstar Manager, Northstar Wireless, and American II ("Second Amended Interest Purchase Agreement"); and (i) Amended and Restated Promissory Note of Northstar Wireless, issued as of March 31, 2018, in favor of American II ("Amended Promissory Note"). Also, since the release of the *Remand Order*, Northstar issued the Second Amended and Restated Promissory Note of Northstar Wireless, issued as of June 7, 2018, in favor of American II ("Second Amended Promissory Note"), and Northstar Spectrum entered into the Amended and Restated Limited Liability Company Agreement of Northstar Wireless, LLC, entered into as of March 31, 2018, by Northstar ("Amended Northstar Wireless Agreement").

DISH looked to the successful applications of 2014 AWS Spectrum Bidco Corporation (“Spectrum Bidco”)¹¹ and Advantage Spectrum, LP (“Advantage Spectrum”).¹² Those applicants were winning bidders in Auction 97 and were awarded bidding credits *after* the Commission released the *Northstar MO&O*.¹³

The modifications made by Northstar and DISH are comprehensive. Among other things, Northstar and DISH have:

- Terminated the Management Services Agreement;
- Terminated the Trademark License Agreement;
- Reduced the amount of Northstar’s indebtedness to DISH by converting all but \$500 million of indebtedness to DISH into non-voting, non-convertible, non-participating preferred equity, repayment of which is not required until there is a liquidation or deemed liquidation event;
- Applied to that preferred equity an 8 percent dividend rate going forward, which is lower than the prior interest rate on the debt;
- Replaced DISH’s investor protection rights with the six types of rights identified in *Baker Creek* as permissible;¹⁴
- Removed restrictions on Northstar’s ability to acquire additional spectrum;
- Eliminated Northstar’s obligation to consult with DISH regarding budgets and business plans;

¹¹ 2014 AWS Spectrum Bidco Corporation, FCC Form 601, ULS File No. 0006670619 (filed Feb. 13, 2015, amended Mar. 10, 2015, Mar. 20, 2015, July 27, 2015, Nov. 10, 2016, and Nov. 18, 2016) (“Spectrum Bidco Application”).

¹² Advantage Spectrum, LP, FCC Form 601, ULS File No. 0006668843 (filed Feb. 12, 2015, amended Mar. 20, 2015, Aug. 20, 2015, Dec. 23, 2015, Jan. 8, 2016, Jan. 19, 2016, Feb. 8, 2016, Feb. 9, 2016, Mar. 21, 2016, and Mar. 31, 2016) (“Advantage Spectrum Application”).

¹³ The Advantage Spectrum Application was granted on July 5, 2016, and the Spectrum Bidco Application was granted on December 1, 2016. *See Wireless Telecommunications Bureau Grants AWS-3 Licenses in the 1695-1710 MHz, 1755-1780 MHz and 2155-2180 MHz Bands, Public Notice*, 31 FCC Rcd 7129 (WTB 2016) (Advantage Spectrum); *Wireless Telecommunications Bureau Grants AWS-3 Licenses in the 1695-1710 MHz Band, Public Notice*, 31 FCC Rcd 12745 (WTB 2016) (Spectrum Bidco).

¹⁴ *See Baker Creek Commc’n, LLC, Memorandum Opinion and Order*, 13 FCC Rcd 18709, 18715 (1998) (“*Baker Creek*”).

- Removed the requirement that Northstar's systems be interoperable with those of DISH;
- Lowered the annual interest rate on the remaining DISH loan from 12 percent to 6 percent going forward;
- Eliminated DISH loan prepayment obligations and required interest payments, such that accrued interest is not payable until the loan maturity date, which has been extended from 7 years to 10 years;
- Eliminated the excess cash flow recapture provision;
- Eliminated the prohibition on Northstar owning real property;
- Reduced from 10 years to 5 years the period during which Northstar Manager may not sell its ownership interests in Northstar Spectrum without DISH's consent;
- Removed DISH's right-of-first-refusal on sales of Northstar Manager's ownership interests in Northstar Spectrum and on license sales, and removed DISH's tag-along rights on the sale of Northstar Manager's ownership interests in Northstar Spectrum;
- Eliminated monetary limits on equipment financing and third-party unsecured debt;
- Clarified that the management fee is not a salary, or any type of cap on Northstar Manager's ability to hire or engage additional resources, including personnel, for network construction and operations;
- Increased from 30 days to 90 days the duration of the put window period after year five;
- Added a second put window after year six;
- Added a window after year seven for a fair market value appraisal; and
- Expanded Northstar's right to initiate a public offering.¹⁵

¹⁵ The parties also have addressed the Commission's stated concern that DISH could require the sale of Northstar's licenses to DISH in the event Northstar failed to qualify for bidding credits. *See Northstar MO&O*, 30 FCC Rcd at 8897, 8931. The Commission was mistaken to conclude that the relevant provision could be invoked if Northstar failed to qualify for bidding credits; by its terms, it applied if Northstar Manager failed to qualify, not Northstar. *See ATTACHMENT 1* at 68-70 (former §§ 11.4(a)(i), (ii)). Nevertheless, the parties have eliminated almost all of Section 11.4 of the agreement, and the remaining provision requires the parties to promptly take reasonable steps to allow Northstar Manager to qualify for bidding credits, provided that the economic and other rights and benefits of the parties' arrangements are preserved. *See id.* at 70 (§ 11.4) The amended provision does not contemplate any sale of licenses to DISH. *See id.*

For ease of reference, set forth as ATTACHMENT 1 to this submission is a copy of the Third Amended Northstar Agreement marked against a *composite* of the First Amended Northstar Agreement¹⁶ as amended by the First Amendment to Amended Northstar Agreement.¹⁷ Set forth as ATTACHMENT 2 to this submission is a copy of the Third Amended Credit Agreement marked against a *composite* of the Amended Credit Agreement¹⁸ as amended by the First Amendment to Amended Credit Agreement¹⁹ and the Second Amendment to Amended Credit Agreement.²⁰ The underlying *composite* documents are comprised solely of, and reflect, agreements that have already been filed with the Commission, and the filed agreements were combined into one document solely for ease of comparison here. Set forth as ATTACHMENT 3 to this submission is the parties' agreement to terminate the Management Services Agreement; and set forth as ATTACHMENT 4 is the parties' agreement to terminate the Trademark License Agreement.

Also for ease of reference, set forth as ATTACHMENT 5 to this submission is a table comparing selected Northstar revised terms against those of Spectrum Bidco and Advantage

¹⁶ First Amended and Restated Limited Liability Company Agreement of Northstar Spectrum, LLC, entered into as of October 13, 2014, by and between Northstar Manager and American II ("Amended Northstar Agreement").

¹⁷ First Amendment to the First Amended and Restated Limited Liability Company Agreement of Northstar Spectrum, LLC, entered into as of February 12, 2015, by and between Northstar Manager and American II ("First Amendment to Amended Northstar Agreement").

¹⁸ First Amended and Restated Credit Agreement, entered into as of October 13, 2014, by and among American II, Northstar Wireless, and Northstar ("Amended Credit Agreement").

¹⁹ First Amendment to the First Amended and Restated Credit Agreement, entered into as of February 12, 2015, by and among American II, Northstar Wireless, and Northstar ("First Amendment to Amended Credit Agreement").

²⁰ Second Amendment to the First Amended and Restated Credit Agreement, entered into as of October 1, 2015, by and among American II, Northstar Wireless, Northstar, and Northstar Manager ("Second Amendment to Amended Credit Agreement").

Spectrum. The summary table, *without* corresponding notes, is set forth here. Please see ATTACHMENT 5 to this submission for the corresponding notes.

Selected Northstar Revised Terms Versus Terms of Commission-Approved Auction 97 Designated Entity Applications

As noted, Spectrum Bidco and Advantage Spectrum were winning bidders in Auction 97 who were awarded bidding credits after the Commission released the *Northstar MO&O*. See ATTACHMENT 5 for notes to this table (signified by letters to distinguish from footnotes to this Submission on Remand).

Northstar Resolution of FCC Issue	Northstar Original	Northstar Revised	Spectrum Bidco	Advantage Spectrum
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A. Revised the terms of the loan provided by strategic investor

Name of strategic investor (and lender)	DISH	DISH	Terrestar	US Cellular
Interest rate	12%	6%	8%	8%
Interest accrual period (i.e., cash payment not required)	5 years	10 years	5 years	10 years
Start of loan repayment	Years 6-9	End of year 10	End of year 5	End of year 10
Final loan repayment	End of year 7	End of year 10	End of year 5	End of year 10
Mandatory sweep of excess cash flow to repay loan	Yes	No	No	No
<i>Limit</i> on equipment financing & unsecured debt	\$25 million each	No	\$1 million limit	No
Limits on holding real property	Yes	No	No	No

B. Terminated the management services agreement with strategic investor

Management services agreement with strategic investor	Yes	No	No	No
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C. Terminated the trademark license agreement

Trademark license agreement with strategic investor	Yes	No	No	No
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Northstar Resolution of FCC Issue	Northstar Original	Northstar Revised	Spectrum Bidco	Advantage Spectrum
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D. Reduced strategic investor supermajority consent rights to reflect *Baker Creek*

Number of approval rights provided to strategic investor	19 rights	6 rights	20 rights	9 rights
Limited to the 6 rights identified in <i>Baker Creek</i>	No	Yes	No	No

E. Eliminated requirements to consult with strategic investor on business plans / budgets and get approval for deviations

Requirement to consult with strategic investor or get approval for deviations	Yes	No	Yes	Yes
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F. Eliminated the requirement for technology to be interoperable with strategic investor

Technology will be interoperable with strategic investor	Yes	No	No	No
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G. Expanded liquidity rights with respect to the controlling party's equity investment

Strategic investor consent for sale of equity to 3rd party	For first 10 years	For first 5 years	Always	Until buildout complete
Strategic investor ROFR / tagalong on equity sale	Yes	No	No	Yes
Sale of equity via put or other mechanism at end of year	End of year 5	End of years 5, 6, 7/8	No	End of years 5, 6, 7/8
Number of days in put window	30 days	90 days	N/A	90 days
Right to execute an IPO	After 14 years	After 7 years	No	No

H. Management fee is a "board-level" fee

(separate and apart from funding that may otherwise be available for hiring employees and operations)

The controlling party receives an annual fee	\$700,000	\$700,000	No	\$50,000
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Northstar Resolution of FCC Issue	Northstar Original	Northstar Revised	Spectrum Bidco	Advantage Spectrum
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I. Reduced debt to \$500 million by converting the balance of debt into preferred stock
(see ATTACHMENT 5 for associated notes)

<u>Strategic investor's investment in the licensee</u>	DISH	DISH	Terrestar	US Cellular
1. Loan (funded amount) ^(a)	\$5,001,370,368	\$500,000,000	\$292,340,000 ^(b)	\$272,448,600 ^(e)
2. Preferred stock (pro forma March 2015) ^(a)	0	4,501,370,368	0	0
3. Equity	<u>750,183,805</u>	<u>750,183,805</u>	(est.) <u>98,899</u> ^(c)	<u>61,300,935</u> ^(g)
4. Subtotal	\$5,751,554,173	\$5,751,554,173	(est.) \$292,438,899	\$333,749,535
<u>Controlling party's investment in the licensee</u>	Northstar Manager	Northstar Manager	Jarvinian	Frequency
5. Equity (funded via party's own capital)	\$132,385,377	\$132,385,377	(est.) \$1,100 ^(c)	\$100,000 ^(j)
6. Equity (funded via loan from strategic investor)	<u>0</u>	<u>0</u>	<u>0</u>	<u>6,711,215</u> ⁽ⁱ⁾
7. Subtotal	\$132,385,377	\$132,385,377	(est.) \$1,100	\$6,811,215 ^(h)
8. License purchase price (net of bidding credit) ("Price")	\$5,883,794,550	\$5,883,794,550	\$291,810,000 ^(d)	\$338,304,000 ^(k)
9. Strategic investor loan as % of Price = (1)/(8)	85.00%	8.50%	100.18%	80.53%
10. Controlling party's equity as % of Price (excluding loan from strategic investor) = (5)/(8)	2.25%	2.25%	(est.) 0.0004%	0.03%
11. Strategic investor's capital as % of Price = (4+6)/(8)	97.75%	97.75%	(est.) 100.2155%	100.67%
12. Total capital invested in licensee = (4)+(7)	\$5,883,939,550	\$5,883,939,550	(est.) \$292,439,999	\$340,560,750 ^(f)

II. NORTHSTAR AND DISH HAVE CURED THE *DE FACTO* CONTROL ISSUES RAISED BY THE COMMISSION

Consistent with the directive of the D.C. Circuit and the *Remand Order*, Northstar and DISH have comprehensively revised their agreements and cured “the *de facto* control the [Commission] found that DISH exercise[d]” over Northstar.²¹ Though Northstar preferred to engage with the Commission in the type of post-auction *de facto* control negotiations the agency has afforded to other winning bidders, as the D.C. Circuit instructed, Northstar and DISH have cured the *de facto* control issues without such input from the Commission. In doing so, Northstar and DISH drew guidance from the successful applications of Spectrum Bidco and Advantage Spectrum, who, as noted, were winning bidders in Auction 97 that were awarded bidding credits *after* the release of the *Northstar MO&O*. The significant changes to the transaction documents make the Northstar/DISH relationship entirely consistent with Commission precedent, including the *Northstar MO&O* and *Baker Creek*. Indeed, even VTel Wireless, Inc. (“VTel”) argued to the Commission last month that Northstar and SNR Wireless LicenseCo, LLC (“SNR”) have “amended their operating agreements to remove DISH’s influence over their businesses”²² The comprehensive changes made by Northstar and DISH address the Commission’s stated concerns and warrant the grant of the bidding credits for which Northstar applied.

A. The Management Services Agreement Has Been Terminated

In the *Northstar MO&O*, the Commission concluded that several provisions of the Management Services Agreement improperly gave “DISH authority with respect to a wide range

²¹ *SNR*, 868 F.3d at 1025.

²² Letter from Bennett L. Ross, Counsel to VTel Wireless, Inc. to Marlene Dortch, Secretary, Federal Communications Commission, ULS File No. 0006670613, 0006670667, at 9 (filed May 4, 2018).

of their technology, network design, construction, operation, marketing, billing, accounting, and other functions. “²³ Northstar and DISH have resolved these concerns by eliminating the Management Services Agreement in its entirety.²⁴ Northstar and DISH have also eliminated the related requirements: (i) that the annual interest rate on loans to Northstar from DISH shall increase in the event of a termination of the Management Services Agreement;²⁵ and (ii) that the commitment period for DISH to make loans would end on the date of the termination of the Management Services Agreement.²⁶

B. The Trademark License Agreement Has Been Terminated

In the *Northstar MO&O*, the Commission found that the Trademark License Agreement’s requirement that Northstar pay royalties to DISH if it uses DISH’s trademarks allowed DISH to obtain a priority distribution over Northstar.²⁷ Northstar and DISH resolved this issue by terminating the Trademark License Agreement.²⁸ Northstar is no longer obligated to pay royalties to DISH (and none were paid prior to the termination of the Trademark License Agreement).

²³ *Northstar MO&O*, 30 FCC Rcd at 8890; *see also id.* 8920-21, 8923, 8926, 8938.

²⁴ *See* ATTACHMENT 3 at 1 (§ 1.1).

²⁵ *See* ATTACHMENT 2 at 19 (§ 2.3(a)).

²⁶ *See id.* at 6 (§ 1.1 (definition of “Commitment Period”)).

²⁷ *Northstar MO&O*, 30 FCC Rcd at 8925.

²⁸ *See* ATTACHMENT 4 at 1 (§ 1.1(a)). As noted, Sections 7.4 (Confidentiality), 8.3 (Actions Upon Expiration or Termination), 8.4 (Rights and Duties Upon Expiration and/or Termination), and 8.5 (Injunctive Relief) of the Trademark License Agreement survived this termination. *See id.* at 1 (§ 1.1(b)).

C. All But \$500 Million of Northstar’s Indebtedness to DISH Has Been Extinguished and Repayment Terms of the Remaining Amount Have Been Modified

The *Northstar MO&O* identified the “unprecedented magnitude of the indebtedness to DISH that SNR and Northstar each incurred to pay for the licenses won” as a significant factor in finding that DISH exercised *de facto* over Northstar.²⁹ The Commission found that the specified interest rate of 12 percent per annum was above market rate.³⁰ And, the Commission observed that terms of the loan from DISH required repayment of 50 percent of the balance between years five and seven and the remaining balance of the loan at the end of year seven in the form of a balloon payment.³¹ Among other things, the Commission found it problematic that the cash in excess of a reasonable reserve for expenses was required to be paid to DISH as lender to reduce the multi-billion dollar loans.³² In the Commission’s view, these were “repayment terms that will be difficult, if not impossible, to manage unless [Northstar] exercise[s] [its] put option.”³³

To resolve these concerns, Northstar and DISH have extinguished and disgorged *all* but \$500 million of Northstar’s indebtedness to DISH.³⁴ DISH exchanged \$6,870,492,660 of the amounts outstanding and owed to it, for 6,870,493 Class A Preferred Interests, par value \$1,000, of Northstar (the “Class A Preferred Interests”).³⁵ The Class A Preferred Interests are non-

²⁹ *Northstar MO&O*, 30 FCC Rcd at 8911.

³⁰ *Id.* at 8931; *see also SNR*, 868 F.3d at 1031.

³¹ *Northstar MO&O*, 30 FCC Rcd at 8926.

³² *See id.* at 8925-26.

³³ *Id.* at 8930.

³⁴ ATTACHMENT 2 at 19 (§ 2.2(g)(ii)).

³⁵ *Id.*

voting, non-participating, not convertible to equity, and have no preemptive rights or co-sale rights.³⁶

The Class A Preferred Interests also do not have a maturity date, which eliminates any concern that the terms of the former indebtedness would “force [Northstar] to refinance or exit the business”³⁷ Instead, the Class A Preferred Interests will accrue distributions at the rate of 8 percent per annum from and after June 7, 2018, and any and all mandatory quarterly distributions therefor may be paid either in cash or by adding such amounts to the then-current face amount.³⁸ The liquidation preference on the Class A Preferred Interests is only due and payable upon a Northstar Spectrum liquidation event or deemed liquidation event.³⁹

The parties also reduced the interest rate on the remaining loan from DISH from 12 percent per annum to 6 percent per annum from and after March 31, 2018⁴⁰ and eliminated the default interest rate on past due amounts, which was previously 16 percent per annum.⁴¹ Moreover, Northstar and DISH have eliminated prepayment obligations and required interest payments, such that accrued interest is not payable until the loan maturity date, which also has

³⁶ See ATTACHMENT 1 at 24-25 (§ 2.2(e)).

³⁷ *Northstar MO&O*, 30 FCC Rcd at 8930.

³⁸ See ATTACHMENT 1 at 27 (§ 3.1).

³⁹ See *id.* at 8, 11 (§ 1.1 (definitions of “Deemed Liquidation Event” and “Liquidation Event”), 27 (§ 3.1)).

⁴⁰ See ATTACHMENT 2 at 19 (§ 2.3(a)).

⁴¹ See *id.* at 19 (§ 2.3(a)), 20 (former § 2.3(f)). The parties also eliminated the prohibition against Northstar from owning of freehold real property, which the Commission asserted was another “example of DISH’s power to control the business decisions of [Northstar Wireless].” *Northstar MO&O*, 30 FCC Rcd at 8931.

been extended from 7 to 10 years.⁴² This included elimination of the “excess cash” recapture provisions of the Amended Credit Agreement.⁴³

The decrease in the interest rate, along with the major reduction of Northstar’s indebtedness to DISH, significantly reduces the debt amount that will become due to DISH. Further, while Northstar’s remaining loan will accrue interest, Northstar is not required to pay the outstanding principal balance and the unpaid interest until the end of year ten.

D. Northstar and DISH Have Amended Northstar’s Put Rights and Ownership Transfer Restrictions

The Commission also expressed concern with Northstar’s put rights and certain ownership transfer restrictions particularly given the scope of Northstar’s indebtedness to DISH and the repayment terms. The *Northstar MO&O* emphasized that Northstar Manager had the right within the thirty day period beginning on the fifth anniversary of the initial license grants to require DISH to purchase its interest in Northstar Spectrum.⁴⁴ In addition, Northstar Manager was unable to transfer its interest in Northstar Spectrum “during the first 10 years of operation without the consent of DISH in its sole and absolute discretion,”⁴⁵ and after the initial 10-year period, Northstar Manager had the right to sell its interest subject to a DISH right of first refusal and “tag along” right.⁴⁶ In the Commission’s view, these provisions, coupled with the financing terms discussed above, would likely force Northstar to refinance or exit the business.⁴⁷

⁴² See ATTACHMENT 2 at 10 (§ 1.1 (definition of “Maturity Date”)).

⁴³ See *id.* at 20 (former § 2.3(e)).

⁴⁴ *Northstar MO&O*, 30 FCC Rcd at 8930.

⁴⁵ *Id.* at 8928.

⁴⁶ See *id.* at 8929.

⁴⁷ *Id.*

Northstar and DISH have amended their agreements to resolve these concerns. Now, Northstar Manager may transfer its interest in Northstar Spectrum without the consent of DISH at any time after the fifth anniversary of the initial license grant date, not the tenth anniversary.⁴⁸ The parties also eliminated in their entirety the DISH right of first refusal and the DISH tag along right.⁴⁹

Separately, Northstar and DISH have (a) extended the fifth anniversary put window from thirty to ninety days in duration,⁵⁰ (b) added a *second* put window comprised of the ninety day period beginning on the sixth anniversary of initial license grants,⁵¹ and (c) added a right for Northstar Manager, in the event it did not exercise the put in the fifth anniversary or sixth anniversary put windows, to require an appraisal of the fair market value of Northstar Spectrum and DISH could purchase its interest at that price.⁵² Finally, Northstar and DISH also advanced the point at which Northstar Manager could convert Northstar Spectrum to a corporation and register shares therein for sale in an underwritten public offering from the fourteenth to the seventh anniversary of the initial grant of licenses.⁵³

These changes increase the flexibility of Northstar Manager to make a determination as to whether to exit the business and, if so, how. The Commission had expressed concern that the conjunction of the loan maturity date with the put exercise window, in addition to the size and maturity period of that loan, might exert a coercive influence over Northstar Manager,

⁴⁸ See ATTACHMENT 1 at 47 (§ 7.1(a)).

⁴⁹ See *id.* at 49-50 (§ 7.3 (former “Right of First Refusal”)), 50-51 (§ 7.4 (former “Tag Along Right”)).

⁵⁰ See *id.* at 53 (§ 8.1(a)).

⁵¹ See *id.*

⁵² See *id.* at 54-57 (§ 8.1(c)).

⁵³ See *id.* at 59 (§ 9.1).

encouraging it to exit the business by selling to DISH.⁵⁴ Now, the loan amount has been dramatically reduced, the maturity date has been extended, two put windows and an appraisal window have been created, and a public offering right has been advanced in time. If Northstar Manager does decide to exit the business, it has multiple ways of doing so, including a potential sale to an entity other than DISH, well before the maturity date of the remaining DISH loan. These types of put rights are fully consistent with Commission precedent.⁵⁵

E. DISH's Supermajority Approval Rights Are Limited to Those Permitted Under *Baker Creek*

In the *Northstar MO&O*, the Commission characterized the supermajority approval rights included in the Northstar/DISH agreements as “19 wide-ranging protections” for DISH that “go[] beyond what is reasonably necessary and appropriate to protect its investments against extraordinary corporate transactions.”⁵⁶ The Commission added that the individual protections “go well beyond the list of six typical investor protections identified in *Baker Creek* . . . that are usual and customary for a purely financial investor that does not intend to control the day-to-day operations of the company”⁵⁷ The Commission also singled out the supermajority approval right that precluded Northstar from acquiring new spectrum licenses without approval from

⁵⁴ See, e.g., *Northstar MO&O*, 30 FCC Rcd at 8929-30.

⁵⁵ *Minnesota PCS Limited Partnership, Order*, 17 FCC Rcd 126, 131 (CWD 2002) (“Put options held by the controlling interest holder under our eligibility rules and rights of first refusal held by the non-controlling interest holder are not *per se* prohibited as long as they leave the ownership decision in the controlling interest holder and do not force an unwanted sale upon that entity.”) (footnote omitted). See also *Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403, 455 (1994) (“*Fifth MO&O*”).

⁵⁶ *Northstar MO&O*, 30 FCC Rcd at 8915.

⁵⁷ *Id.* at 8916.

DISH, expressing the view that this “frustrates the purpose and possible expansion of” Northstar’s business.⁵⁸

Accordingly, Northstar and DISH have eliminated *all* of the supermajority approval rights that had been enumerated in the definition of “Significant Matter” and replaced them with just the six “typical investor protection rights identified in *Baker Creek . . .*”⁵⁹ The narrowed investor protection provisions address only the following matters, which the Commission characterized as “usual and customary for a purely financial investor that does not intend to control the day-to-day operations of the company:”⁶⁰

- the reclassification and issuance of interests in, and admitting members in connection therewith to, Northstar Spectrum;
- setting compensation for senior management (but only where such compensation is not market-based);
- incurrence of significant indebtedness;
- liquidation or dissolution of Northstar Spectrum, filing a petition for bankruptcy, consolidating or merging Northstar Spectrum with another entity, or agreeing to enter into a partnership or joint venture, except in the ordinary course of business;
- making any expenditure or agreeing to make any expenditure that would significantly affect Northstar Spectrum’s market capitalization; and
- the sale or transfer of any major asset.⁶¹

Among the investor protection rights that the parties eliminated was the term requiring DISH consent for “the acquisition by the Company or any of its subsidiaries of any new spectrum

⁵⁸ *Id.* at 8917.

⁵⁹ *Id.* at 8916.

⁶⁰ *Id.*

⁶¹ See ATTACHMENT 1 at 15-18 (§ 1.1 (definition of “Significant Matter”)). These bullet points represent the subject matters addressed by the corresponding remaining approval rights. The specific contractual terms implementing these concepts are shown in ATTACHMENT 1 at 15-18 (§ 1.1 (definition of “Significant Matter”)).

licenses”⁶² Finally, the parties established that each of the *amended* investor protection provisions would apply only to the extent consistent with the decision in *Baker Creek* and the approvals regarding the Spectrum Bidco and Advantage Spectrum applications.⁶³

In short, Northstar and DISH have eliminated those investor protection terms that the Commission previously identified as problematic. The remaining, amended provisions are those that, as described by the Commission, give the non-controlling shareholder a decision-making role, through supermajority or similar mechanisms, solely in major corporate decisions that fundamentally affect its interests. As such, the new, limited-scope investor protection provisions applicable to Northstar are consistent with the permissible investor protection provisions identified in the *Northstar MO&O*, *Baker Creek*,⁶⁴ and the *Fifth MO&O*.⁶⁵

F. Northstar and DISH Have Eliminated Consultation Requirements Regarding Northstar’s Business Plans and Budgets

In the *Northstar MO&O*, the Commission found that Northstar does not fully control its own business plans due to consultation requirements with DISH,⁶⁶ “particularly in light of the role that DISH, as an 85 percent investor and a multi-billion dollar lender, is likely to play”⁶⁷ The Commission found that DISH’s consultative role as articulated in the Management

⁶² *Id.* at 18.

⁶³ *Id.* at 16-18.

⁶⁴ *See Baker Creek*, 13 FCC Rcd at 18715.

⁶⁵ *See Fifth MO&O*, 10 FCC Rcd at 448.

⁶⁶ *Northstar MO&O*, 30 FCC Rcd at 8920.

⁶⁷ *Id.* Northstar notes that the manager member of Northstar Manager is Doyon, Limited, an Alaska Native Regional Corporation organized by Congress under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601, and owned by more than 19,000 Alaska Native shareholders. Doyon, Limited has significant experience in the wireless field. *See, e.g.*, Northstar Wireless, LLC Opposition to Petitions to Deny, ULS File No. 0006670613, at 2-6 (filed May 18, 2015) (“Northstar Opposition”); *id.*, Declaration of Allen M. Todd at ¶ 11 (“Years ahead of the Commission’s build-out requirements applicable to the license granted to Denali Spectrum,

Services Agreement “effectively amounts to ‘veto power,’ because ‘it is doubtful that either SNR or Northstar would ever cross DISH’ given the leverage that DISH possesses over them.”⁶⁸

Northstar and DISH resolved these concerns by eliminating the Management Services Agreement in its entirety. Likewise, the parties have eliminated the required “consultation with American II [DISH]” about preparing, adopting, updating, and modifying the five-year business plans, the annual business plans, or the budgets of Northstar Spectrum.⁶⁹ And, the parties have added a provision clarifying that “[a]ll such Business Plans and budgets shall be adopted or modified in accordance with the provisions of this Section 6.5 by [Northstar Manager] in its sole and unilateral judgment.”⁷⁰

G. The Agreements Have Been Revised to Make Clear That Northstar Alone May Select the Technology for its Operations

In the *Northstar MO&O*, the Commission stated that the interoperability terms in the Amended Northstar Agreement and the Trademark License Agreement gave DISH *de facto* control over Northstar’s operations and a controlling interest in Northstar.⁷¹

To address this concern, the parties have revised the definition of “Business” in the Third Amended Northstar Agreement to strike the interoperability term in its entirety.⁷² And, as noted

Doyon[, Limited], through Denali Spectrum, completely built-out the greater Chicago area and portions of Wisconsin with more than 900 cell sites, a green-field project covering 18,000 square miles and a population of more than 11 million. This service, under the Cricket brand, brought industry-changing contract innovations (*e.g.*, unlimited and no-contract plans) to the wireless industry and made available the first affordable broadband for the lower-income citizens of Chicago, Madison, Rockford and Kenosha.”).

⁶⁸ *Northstar MO&O*, 30 FCC Rcd at 8920.

⁶⁹ See ATTACHMENT 1 at 45-46 (§ 6.5(a), (b)).

⁷⁰ *Id.* at 46 (§ 6.5(c)).

⁷¹ *Northstar MO&O*, 30 FCC Rcd at 8895, 8927-28, 8935, 8938-40 (citing 47 C.F.R. § 1.2110(c)(2)(ii)(H)).

⁷² See ATTACHMENT 1 at 6 (§ 1.1 (definition of “Business”)).

above, the parties have terminated the Trademark License Agreement.⁷³ This revised language, and that termination, confirm that Northstar is empowered to select the technology for its operations.

H. Northstar and DISH Have Resolved Concerns Relating to Other Management and Financial Provisions

In the *Northstar MO&O*, the Commission noted that the Amended Credit Agreement “impose[d] substantial financial penalties on . . . Northstar if [it] terminate[d] the Management Services Agreements for any reason other than a material breach.”⁷⁴ And, the Commission characterized the procedures for terminating the Management Services Agreement as “onerous, if not coercive” and “establish[ing] hurdles that affirmatively deter” Northstar from terminating the Management Services Agreement.⁷⁵ The Commission also found that provisions limiting Northstar to a total of \$25 million in purchase money financing and a total of \$25 million in third party unsecured financing to go “too far” in protecting DISH’s interests, particularly in light of the number of licenses acquired by Northstar.⁷⁶

Northstar and DISH have addressed each of these concerns. As noted above, the parties have terminated the Management Services Agreement.⁷⁷ Separately, Northstar and DISH reduced the interest rate on the loans from DISH from 12 percent per annum to 6 percent per

⁷³ See ATTACHMENT 4 at 1 (§ 1.1(a)). As noted, Sections 7.4 (Confidentiality), 8.3 (Actions Upon Expiration or Termination), 8.4 (Rights and Duties Upon Expiration and/or Termination), and 8.5 (Injunctive Relief) of the Trademark License Agreement survived this termination. See *id.* at 1 (§ 1.1(b)).

⁷⁴ *Northstar MO&O*, 30 FCC Rcd at 8921.

⁷⁵ *Id.* at 8920-21 (footnote omitted).

⁷⁶ See *id.* at 8924.

⁷⁷ See ATTACHMENT 3 at 1 (§ 1.1).

annum from and after March 31, 2018⁷⁸ and eliminated the increased interest rate that applied in the event of a termination of the Management Services Agreement for any reason other than a material breach by DISH thereunder.⁷⁹ Finally, Northstar and DISH eliminated the \$25 million limitations on purchase money financing and unsecured third party debt. Such borrowing by Northstar is now subject to no such limits.⁸⁰

I. Northstar and DISH Have Resolved Concerns Relating to Ownership of Real Property

In the *Northstar MO&O*, the Commission observed that Northstar was prohibited from owning any freehold real property under the Amended Credit Agreement, concluding that “the lack of an unfettered choice as to the type of real estate to hold is another example of DISH’s power to control the business decisions of [Northstar].”⁸¹

The parties have eliminated the provision prohibiting Northstar’s ownership of freehold real property.⁸²

J. Northstar and DISH Have Clarified the Purposes of the Designated Entity Management Fee

The *Northstar MO&O* also expressed concern that the management fee established in the Amended Northstar Spectrum Agreement made it unlikely that Northstar “would be able to retain and pay for sufficient employees and supporting facilities to realistically exercise control over their respective businesses.”⁸³ This conclusion was based upon the Commission’s belief

⁷⁸ See *id.* ATTACHMENT 2 at 19 (§ 2.3(a)).

⁷⁹ See *id.*

⁸⁰ See *id.* at 33-34 (§§ 6.9(b), (g)).

⁸¹ *Northstar MO&O*, 30 FCC Rcd at 8931.

⁸² See ATTACHMENT 2 at 35 (former § 6.12).

⁸³ *Northstar MO&O*, 30 FCC Rcd at 8922. See also *id.* at 8923 (“Although the Agreements provide that [personnel] decisions should be made with ‘directions and guidance from, and in consultation’ with . . . Northstar, we conclude that DISH has the power to control

that the management fee was “for use in covering not only [Northstar’s] costs for personnel and related expenses, but also for all of the other operating costs of [its] businesses.”⁸⁴ The Commission also concluded that the management fee resulted in Northstar appearing to be a subsidiary of DISH.⁸⁵

The Commission was mistaken to conclude that the management fee provided for in the Amended Northstar Agreement was intended “for use in covering not only [Northstar’s] costs for personnel and related expenses, but also for all of the other operating costs of [its] businesses.” That was never the intent of this provision. Instead, Northstar was always able to draw working capital under its loan facility to pay expenses and operating costs, including costs for personnel.⁸⁶ Accordingly, Northstar and DISH have added the following clarifying language regarding the management fee:

For the avoidance of doubt, the Management Fee is meant solely as a payment to the Manager in lieu of a board of managers fee which would typically be payable to a managing member of a board in connection with its oversight and control of the Company, and is not meant to cover the operating, overhead or employee compensation expenses of the Company and its Subsidiaries, all of which will be payable directly by the Company and its Subsidiaries (and not by the Manager itself).⁸⁷

By clarifying this point, Northstar and DISH have resolved any concern that the management fee was intended to pay for personnel and operating costs.

the actual selecting, arranging and supervising of employees, with little direct involvement by [Northstar Wireless] given the meager personnel resources that Northstar will be able to afford”).

⁸⁴ *Id.* at 8922.

⁸⁵ *Id.* at 8926.

⁸⁶ *See* ATTACHMENT 2 at 13 (§ 1.1 (definition of “Working Capital”), 18 (§ 2.2(b)(i))).

⁸⁷ ATTACHMENT 1 at 46-47 (§ 6.6).

III. THE REVISED NORTHSTAR TERMS MEET OR EXCEED TERMS IN THE MORE RECENTLY APPROVED SPECTRUM BIDCO AND ADVANTAGE SPECTRUM TRANSACTIONS

The preceding discussion shows that Northstar and DISH have amended the terms of their agreements to eliminate, revise, or clarify the specific contractual arrangements that generated the Commission’s conclusions that DISH exercised *de facto* control over Northstar. This demonstration is bolstered by a comparison of the revised agreements discussed here with the transaction terms of two Auction 97 designated entities—Spectrum Bidco and Advantage Spectrum—who were awarded licenses and bidding credits by the Bureau *after* the *Northstar MO&O* was released by the Commission.

In the *Northstar MO&O*, the Commission “expressly disavow[ed]” any “prior actions of Commission staff” that could be read to be inconsistent with the Commission’s interpretation of its rules in the *Northstar MO&O*.⁸⁸ The rulings on the Spectrum Bidco and Advantage Spectrum applications, however, were subsequent actions of Commission staff, which, by virtue of that fact alone, were not disavowed by the Commission. Moreover, Northstar presumes that, in passing on the bidding credit qualifications of these Auction 97 winning bidders, the Bureau looked to and acted in a manner that was consistent with the Commission’s interpretation of its rules in the *Northstar MO&O*. And, the comparison that follows shows that the revised Northstar and DISH agreements meet or exceed the standards established in the cases of these subsequently successful applications.

⁸⁸ *Northstar MO&O*, 30 FCC Rcd at 8937 n.354. *See also id.* at 8939 n.365.

A. Management Services Agreement

Northstar and DISH have terminated the Management Services Agreement. The Spectrum Bidco and Advantage Spectrum transactions also involved no management services agreements.

B. Trademark License Agreement

Northstar and DISH have terminated the Trademark License Agreement.⁸⁹ The Spectrum Bidco and Advantage Spectrum transactions also involved no trademark license agreements.

C. Indebtedness

i. Amount of debt

In the *Northstar MO&O*, the Commission indicated that a “significant factor” in analyzing whether DISH had *de facto* control of Northstar was “the unprecedented magnitude of the indebtedness to DISH that . . . Northstar . . . incurred to pay for the licenses won.”⁹⁰ In Auction 97, Northstar was the winning bidder for 345 licenses with an aggregate gross bid of \$7,845,059,400 and an aggregate net bid of \$5,883,794,550 (if bidding credits had been applied).⁹¹ DISH has loaned \$500 million to Northstar, an amount equal to 8.5 percent of the \$5,883,794,550 net license purchase price.

⁸⁹ As noted, Sections 7.4 (Confidentiality), 8.3 (Actions Upon Expiration or Termination), 8.4 (Rights and Duties Upon Expiration and/or Termination), and 8.5 (Injunctive Relief) of the Trademark License Agreement survived this termination. See ATTACHMENT 4 at 1 (§ 1.1(b)).

⁹⁰ *Northstar MO&O*, 30 FCC Rcd at 8911.

⁹¹ See *Auction of Advanced Wireless Servs. (AWS-3) Licenses Closes, Winning Bidders Announced for Auction 97, Public Notice*, 30 FCC Rcd 630, 640-734 (2015) (“Winning Bidder Public Notice”).

By comparison, Spectrum Bidco and Advantage Spectrum have materially higher debt as a percentage of license purchase price. Spectrum Bidco was the winning bidder for 18 licenses with an aggregate net bid of \$291,810,000 (after applying its awarded bidding credits).⁹² Terrestar Corporation (“Terrestar”), the Spectrum Bidco non-controlling investor, loaned \$292,340,000 to Spectrum Bidco,⁹³ an amount equal to 100.18 percent of its net license purchase price. And, Advantage Spectrum was the winning bidder for 124 licenses with an aggregate net bid of \$338,304,000 (after applying its awarded bidding credits).⁹⁴ United States Cellular Corporation (“US Cellular”), the Advantage Spectrum non-controlling investor, loaned \$272,448,600 to Advantage Spectrum,⁹⁵ an amount equal to 80.53 percent of its net license purchase price.

ii. Interest rates and payment terms

The interest rate for Northstar’s debt is 6 percent per annum from and after March 31, 2018.⁹⁶ The interest rate for Spectrum Bidco’s debt is 8 percent per annum,⁹⁷ and the interest

⁹² See *id.* at 643, 648, 652, 655-56, 663, 667-68, 671, 674, 683, 687, and 690.

⁹³ See Spectrum Bidco Application at Attachment to Supplement to Exhibit D - Agreement 10 (filed Mar. 20, 2015), Amendment No. 1 to Second Amended and Restated Promissory Note between Spectrum Bidco and TerreStar, dated March 4, 2015, at Schedule II.

⁹⁴ See *Winning Bidder Public Notice*, 30 FCC Rcd at 640-734.

⁹⁵ See Advantage Spectrum Application at Amendment No 1 Loan & Security Agreement Advantage Spectrum (filed Mar. 20, 2015), Amendment No. 1 to Loan and Security Agreement by and between Advantage Spectrum and United States Cellular Corporation, dated February 6, 2015, at § 1.

⁹⁶ See ATTACHMENT 2 at 19 (§ 2.3(a)).

⁹⁷ See Spectrum Bidco Application at Attachment to Supplement to Exhibit D - Agreement 9 (filed Mar. 20, 2015), Second Amended and Restated Promissory Note between Spectrum Bidco and TerreStar, dated February 27, 2015, at § 2.1(b) (“Spectrum Bidco Second Promissory Note”).

rate for Advantage Spectrum's debt is 8 percent per annum.⁹⁸ Northstar is required to fully repay its debt after 10 years from initial license grant.⁹⁹ In contrast, Spectrum Bidco is required to fully repay its debt after 5 years.¹⁰⁰ Advantage Spectrum is required to fully repay its debt after 10 years.¹⁰¹

iii. Access to third party debt and financing

Northstar does not have limits on its access to equipment financing or unsecured third party debt.¹⁰² Spectrum Bidco may not incur new indebtedness greater than \$1 million or incur a lien on its properties or assets with a value of \$500,000 or more individually or \$1 million in the aggregate.¹⁰³ Without a supermajority vote of the partners, Advantage Spectrum may not incur new indebtedness, except for (i) debt that is \$500,000 or less, or (ii) debt approved in the business plan.¹⁰⁴

D. Put, Appraisal, and Public Offering Rights

Within the ninety day windows beginning at the fifth anniversary and sixth anniversary of initial license grant, Northstar Manager has the right to require DISH to purchase its interests

⁹⁸ See Advantage Spectrum Application at Loan & Security Agreement (Advantage Spectrum) (filed Mar. 20, 2015), Loan and Security Agreement between Advantage Spectrum and US Cellular, dated as of September 19, 2014, at § 1.03 ("Advantage Spectrum Loan Agreement").

⁹⁹ See ATTACHMENT 2 at 10 (§ 1.1 (definition of "Maturity Date")).

¹⁰⁰ See Spectrum Bidco Second Promissory Note, at § 2.1(a).

¹⁰¹ See Advantage Spectrum Loan Agreement, at § 1.03(iv).

¹⁰² See ATTACHMENT 2 at 33-34 (§§ 6.9(b), (g)).

¹⁰³ See Spectrum Bidco Second Promissory Note, at § 6.4.

¹⁰⁴ See Advantage Spectrum Application at LP Agreement - Advantage Spectrum (filed Mar. 20, 2015), Agreement Establishing Advantage Spectrum, L.P. by and between Frequency Advantage, L.P. and USCC Wireless Investment, Inc., as of August 29, 2014, at § 5.3(e) ("Advantage Spectrum Limited Partnership Agreement").

in Northstar Spectrum.¹⁰⁵ In addition, Northstar Manager has the right to require an appraisal of the fair market value of Northstar Spectrum and DISH could purchase its interest at that price.¹⁰⁶ And, at the seventh anniversary of the initial grant of licenses, Northstar Manager may convert Northstar Spectrum to a corporation and register shares therein for sale in an underwritten public offering.¹⁰⁷

The Spectrum Bidco transaction does not appear to have a put option for its general partner (but it does have aggressive debt repayment terms under which its debt is fully payable after five years).¹⁰⁸ The structure and timing of the Advantage Spectrum put and appraisal rights are essentially identical to those available now to Northstar.¹⁰⁹ And, neither Spectrum Bidco nor Advantage Spectrum have a public offering right.

E. Transfer Restrictions

Northstar Manager may transfer its interest in Northstar Spectrum *without* the consent of DISH at any time after the fifth anniversary of the initial license grant date, and there is no DISH right of first refusal or tag along right.

In the case of Spectrum Bidco, the interest of the general partner (Jarvinian AWS3 LLC) may not be transferred *at any time* without the prior written consent of a supermajority-in-

¹⁰⁵ See ATTACHMENT 1 at 53 (§ 8.1(a)).

¹⁰⁶ See *id.* at 54-57 (§ 8.1(c)).

¹⁰⁷ See *id.* at 59-63 (§§ 9.1-9.6).

¹⁰⁸ Spectrum Bidco is required to fully repay its debt after 5 years. See Spectrum Bidco Second Promissory Note, at § 2.1(a).

¹⁰⁹ See Advantage Spectrum Limited Partnership Agreement at §§ 9.5 (put), 9.6 (appraisal).

interest,¹¹⁰ which demands approval of 75 percent of the limited partner interests.¹¹¹ The Spectrum Bidco transaction does not appear to have a right of first refusal or a tag along right for the benefit of the limited partner,

In the case of Advantage Spectrum, the general partner (Frequency Advantage, L.P.) may not transfer its interest without the written consent of all other partners until the date on which the partnership has satisfied the Commission's requirements with respect to the initial build out of the AWS-3 system.¹¹² Even then—and applicable to all transfers by the general partner—the other partners have a right of first refusal on the transfer of the general partner's interest and a tag along right.¹¹³

F. Investor Protections

The six provisions in the *amended* supermajority approval rights for Northstar are more narrow in scope and smaller in number than the investor protection terms approved in the cases of Spectrum Bidco and Advantage Spectrum. Certain of the investor protections terms overlap in scope and are similar, but Spectrum Bidco and Advantage Spectrum have provisions in their agreements that go well beyond the supermajority approval rights for Northstar. In terms of sheer numbers, each of Spectrum Bidco and Advantage Spectrum have more supermajority approval rights provisions than Northstar.

¹¹⁰ See Spectrum Bidco Application at Attachment to Exhibit D - Agreement 8 (Redacted) (filed Mar. 20, 2015), Amended and Restated Limited Partnership Agreement of 2014 AWS Spectrum Partnership, LP between Jarvinian AWS3 LLC and TerreStar, effective as of October 15, 2014, at § 6.1(a) ("Spectrum Bidco Limited Partnership Agreement").

¹¹¹ See *id.* at § 5.3.

¹¹² See Advantage Spectrum Limited Partnership Agreement at § 9.1(a). The limitations on transfers applies to all partners. See *id.*; see also *id.* at § 9.9.

¹¹³ See *id.* at §§ 9.7, 9.8. The right of first refusal and the tag along right applies to proposed transfers by all partners. See *id.*

i. Issuance of interests

Like Northstar, Spectrum Bidco and Advantage Spectrum each have provisions requiring supermajority approval for issuance or reclassification of interests in the partnership or the company. Northstar is required to obtain the prior written approval of DISH for “the reclassification of Interests and the issuance of Interests in the Company directly from the Company to any Person and the admission of any such Person to the Company as a Member”¹¹⁴ For Spectrum Bidco, consent is required for “any issuance or reclassification of any Partnership Interest or any equity interests of any subsidiary of the Partnership.”¹¹⁵ A supermajority vote is required in order for Advantage Spectrum to “[i]ssue interests in the Partnership directly from the Partnership to any Person and admit any such Person to the Partnership as a General Partner or an additional Limited Partner”¹¹⁶

ii. Setting compensation for senior management

Northstar needs the prior written approval of DISH when “setting compensation for senior management” but this approval is *not* needed for “compensation that is market-based.”¹¹⁷ The Spectrum Bidco transaction requires the consent of a supermajority-in-interest for “setting compensation for any member of senior management of the Partnership or its subsidiaries in

¹¹⁴ ATTACHMENT 1 at 16 (§ 1.1 (definition of “Significant Matter”)). The amended provision establishes, however, that this provision shall not restrict any issuance of additional Preferred Interests in connection with any distributions made to Class A Members in respect of their Preferred Interests pursuant to the terms of the Agreement as determined by the Manager in its sole discretion, or transfers of existing Interests in Northstar Spectrum, which shall be governed by Article 7 of the Third Amended Northstar Agreement. *See id.*

¹¹⁵ Spectrum Bidco Limited Partnership Agreement at § 5.4(a).

¹¹⁶ Advantage Spectrum Limited Partnership Agreement at § 5.3(a).

¹¹⁷ ATTACHMENT 1 at 16 (§ 1.1 (definition of “Significant Matter”)).

excess of \$200,000 per year.”¹¹⁸ Advantage Spectrum does not appear to have a supermajority provision regarding setting compensation for senior management.

iii. Indebtedness and liens

Spectrum Bidco, Advantage Spectrum, and Northstar each have provisions requiring supermajority approval for incurring indebtedness and liens. Northstar needs supermajority approval only for:

the incurrence of any significant indebtedness in the name of the Company; the modification, extension, renewal, refinancing or restructuring of any significant debt; the pledge, assignment or otherwise use of any assets of the Company as security for any significant indebtedness or the action to obligate the Company as a surety, guarantor or accommodation party to any obligation or to any other Person.¹¹⁹

This is another Northstar provision that matches squarely the scope of the investor protection rights outlined in *Baker Creek*, including having no predetermined amounts of indebtedness that would trigger the need for significant matter approval, regardless of the Northstar business plan in effect at the time.

This is far more flexible than the terms approved for Spectrum Bidco and Advantage Spectrum. In the case of Spectrum Bidco, the consent of a supermajority vote is required to “subject to any Lien or otherwise encumber, permit, allow or suffer to be encumbered, any of the material properties or assets (whether tangible or intangible)”¹²⁰ The Spectrum Bidco

¹¹⁸ Spectrum Bidco Limited Partnership Agreement at § 5.4(b). *Cf. Northstar MO&O*, 30 FCC Rcd at 8922 (Northstar provision requiring DISH approval of agreements to pay any of personnel more than \$200,000 annually constrains it “to operate within the parameters of predetermined amounts . . . [with] no authority to adjust them as [it] may, in [its] discretion, deem necessary”).

¹¹⁹ ATTACHMENT 1 at 16 (§ 1.1 (definition of “Significant Matter”).

¹²⁰ Spectrum Bidco Limited Partnership Agreement at § 5.4(c).

provisions establish that any properties or assets with a value in excess of \$500,000 individually or \$1,000,000 in the aggregate shall be deemed to be material properties or assets.¹²¹

Meanwhile, without a supermajority vote of the partners, Advantage Spectrum may not “[i]ncur any indebtedness in the name of the Partnership; modify, extend, renew, refinance or restructure any debt; pledge, assign or otherwise utilize any assets of the Partnership as security for any indebtedness” except for “indebtedness arising out of an individual or a related series of transactions from time to time in the aggregate principal amount of \$500,000 or less” or indebtedness approved or contemplated by the “Business Plan Assumptions” or the annual budget in force at the time.¹²²

iv. Liquidation, dissolution, bankruptcy, consolidation, or merger

Northstar, Spectrum Bidco, and Advantage Spectrum each have provisions requiring supermajority approval for liquidation, dissolution, bankruptcy, consolidation, or merger. Northstar needs the prior written approval of DISH for the liquidation or dissolution of the Company, the filing of a petition for bankruptcy, the consolidation or merger of the Company into or with any other Person or acquisition of any interest in any other Person or any significant portion of the assets of any other Person or agree to enter into any partnership or joint venture, except in the ordinary course of business.¹²³ In nearly all material respects, the Northstar terms are similar to that which was approved in the cases of Spectrum Bidco and Advantage Spectrum.

In the case of Spectrum Bidco, the consent of a supermajority-in-interest is required for “fundamental changes in the structure of the Partnership or any of its subsidiaries, including by

¹²¹ *See id.*

¹²² Advantage Spectrum Limited Partnership Agreement at § 5.3(e).

¹²³ ATTACHMENT 1 at 16-17 (§ 1.1 (definition of “Significant Matter”)).

merger or dissolution.”¹²⁴ Supermajority approval also is needed for, *inter alia*, making an assignment for the benefit of creditors or filing a voluntary petition of bankruptcy.¹²⁵

A super-majority vote of the partners of Advantage Spectrum is required in order to, *inter alia*, liquidate or dissolve the Partnership, file a petition for bankruptcy, consolidate or merge the Partnership into or with any other Person or acquire any interest in any other Person.¹²⁶

v. Expenditures

Northstar needs supermajority approval only for “the making of any expenditure, or the agreement to make any expenditure, which would significantly affect the Company’s market capitalization.”¹²⁷ This provision is *less* restrictive than the terms approved for Spectrum Bidco or Advantage Spectrum.

Like Northstar, Spectrum Bidco requires the consent of a supermajority-in-interest for “expenditures that significantly and materially affect the market capitalization or value of the Partnership or any of its subsidiaries.”¹²⁸ But, Spectrum Bidco also requires consent when making a single capital expenditure in excess of 115 percent of the amount budgeted in the annual budget for a line item or making a capital expenditure in excess of 110 percent of the total amount provided in the annual budget.¹²⁹ And, without a super-majority vote of US Cellular, Advantage Spectrum may not “[m]ake any expenditure, or agree to make any expenditure, which

¹²⁴ Spectrum Bidco Limited Partnership Agreement at § 5.4(g).

¹²⁵ *See id.* at § 5.4(s).

¹²⁶ Advantage Spectrum Limited Partnership Agreement, at § 5.3(g).

¹²⁷ ATTACHMENT 1 at 17 (§ 1.1 (definition of “Significant Matter”).

¹²⁸ Spectrum Bidco Limited Partnership Agreement at § 5.4(d).

¹²⁹ *See id.* at § 5.4(k).

would cause expenditures to exceed, by more than ten percent (10%), those expenditures budgeted in the annual budget in force at the time of the expenditure”¹³⁰

vi. Sale of assets and licenses

Northstar requires the prior written approval of DISH only for:

the sale, transfer, exchange, lease, mortgage, pledge or assignment or entry into any agreement for the sale, transfer, exchange, lease, mortgage, pledge or assignment of any major asset (where assets include, but are not limited to, licenses), or of all or substantially all of the Company’s assets (including assets held by the Company’s subsidiaries) (in each case, other than pursuant to the Interest Purchase Agreement, NSM Pledge Agreement and NSM Security Agreement).¹³¹

This provision is limited to “major assets,” and, as it relates to licenses, is less restrictive than a requirement for supermajority consent for the sale of *any* spectrum license.

In contrast, in the case of Spectrum Bidco, the consent of Terrestar is required for “the sale of any spectrum license owned by the Partnership or any of its subsidiaries.”¹³² In the case of Advantage Spectrum, supermajority approval is needed to “[s]ell, transfer, exchange, lease, mortgage, pledge, or assign or enter into any agreement for the sale, transfer, exchange, lease, mortgage, pledge or assignment of any License, or of all or substantially all of the Partnership’s assets.”¹³³

¹³⁰ Advantage Spectrum Limited Partnership Agreement, at § 5.3(d). Excepted from this limitation are expenditures made pursuant to any agreement or program properly authorized by the general Partner or previously approved pursuant to Article V of the Advantage Spectrum Limited Partnership Agreement and expenditure increases consistent with corresponding increases in revenues in excess of budgeted amounts. *See id.*

¹³¹ ATTACHMENT 1 at 18 (§ 1.1 (definition of “Significant Matter”)).

¹³² Spectrum Bidco Limited Partnership Agreement at § 5.4(e).

¹³³ Advantage Spectrum Limited Partnership Agreement at § 5.3(f).

vii. Additional Spectrum Bidco or Advantage Spectrum Terms

As shown, certain of the Spectrum Bidco or Advantage Spectrum investor protection terms overlap in scope and are similar to Northstar terms, but Spectrum Bidco and Advantage Spectrum have provisions in their agreements that go well beyond the supermajority approval rights for Northstar.

Spectrum Bidco has a greater number of supermajority approval rights provisions than Northstar. Spectrum Bidco's additional supermajority approval rights provisions include the following matters:¹³⁴

- Approving, rejecting, or modifying the total amount of revenues, the total amount of expenses, and the total cash outflow set forth in each annual budget and extraordinary modifications of the annual budget;¹³⁵
- Making any material change to the partnership's business or business plan;¹³⁶
- Entering into an agreement or arrangement with any party not dealing at arm's length with any party;¹³⁷
- Making fundamental changes in the structure of the partnership or its subsidiaries;¹³⁸
- Owning, establishing, managing, participating in, being employed by, working for, rendering services to, or maintaining an interest in an entity that is participating in the auction of Advanced Wireless Services licenses, or taking action in competition with the partnership regarding that auction;¹³⁹
- Entering into or the renewal or amendment by the Partnership or any of its subsidiaries of any real property lease with payments in excess of \$500,000 in any twelve (12) month period;¹⁴⁰

¹³⁴ The bullet points that follow summarize certain subject matters addressed by the supermajority approval rights provisions in the Spectrum Bidco Limited Partnership Agreement.

¹³⁵ See Spectrum Bidco Limited Partnership Agreement at § 5.4(l).

¹³⁶ See *id.* at § 5.4(h).

¹³⁷ See *id.* at § 5.4(j).

¹³⁸ See *id.* at § 5.4(g).

¹³⁹ See *id.* at § 5.13(c).

¹⁴⁰ See *id.* at § 5.4(p).

- Making any business acquisition, acquisition of assets or investment or the entry into any partnership, joint venture or other business arrangement with any third party that is material to the Partnership or any of its subsidiaries or is otherwise out of the ordinary course of business of the Partnership or any of its subsidiaries or the initiation of any activity leading to such event;¹⁴¹
- Entering into a transaction, contract, agreement, or arrangement committing or obligating the partnership or its subsidiaries to take any action described in the supermajority approval rights provisions;¹⁴² and
- Declaring or paying any return of capital or other distribution, except for interest, principal, and other amounts payable on debts.¹⁴³

Advantage Spectrum also has a greater number of supermajority approval rights provisions than Northstar. Advantage Spectrum's additional supermajority approval rights provisions include the following matters:¹⁴⁴

- Making any material change to the partnership's business;¹⁴⁵
- Making an agreement with a partner or affiliate of a partner for payments in excess of \$500,000 or accepting a loan from a partner or affiliate of a partner;¹⁴⁶
- Changing the budget to increase an expenditure by more than ten percent above its budgeted amount;¹⁴⁷ and
- Modifying the bidding protocol for the auction.¹⁴⁸

Thus, the supermajority approval rights provisions for Spectrum Bidco and Advantage Spectrum go well beyond the supermajority approval rights for Northstar.

¹⁴¹ See *id.* at § 5.4(r).

¹⁴² See *id.* at § 5.4(t).

¹⁴³ See *id.* at § 5.4(i).

¹⁴⁴ The bullet points that follow summarize certain subject matters addressed by the supermajority approval rights provisions in the Advantage Spectrum Limited Partnership Agreement.

¹⁴⁵ See Advantage Spectrum Limited Partnership Agreement at § 5.3(h).

¹⁴⁶ See *id.* at § 5.3(i).

¹⁴⁷ See *id.* at § 5.3(j).

¹⁴⁸ See *id.* at § 5.3(b).

G. Business Plans and Budgets

The provisions regarding business plans and budgets in Northstar’s agreements are less restrictive than provisions in the agreements for Spectrum Bidco and Advantage Spectrum. As noted above, Northstar Manager is not required to consult with DISH about the business plans and budgets of Northstar Spectrum,¹⁴⁹ and Northstar Manager may adopt or modify business plans and budgets in its sole and unilateral judgment.¹⁵⁰ Northstar does not need approval from DISH to modify its business plans and budgets.¹⁵¹

In the case of Spectrum Bidco, the general partner is required to consult with the limited partners regarding the preparation of the annual budget.¹⁵² Thereafter, a supermajority-in-interest vote is required to make a single capital expenditure in excess of 115 percent of the amount budgeted in the annual budget for a line item or a capital expenditure in excess of 110 percent of the total amount provided in the annual budget¹⁵³ or to make “any material change in the business or the business plan of the Partnership”¹⁵⁴ Furthermore, consent is required for “approval, rejection, or modification of the total amount of revenues, total amount of expenses and the total cash flow set forth in each Annual Budget and extraordinary modifications of the Annual Budget.”¹⁵⁵

In the case of Advantage Spectrum, without a super-majority vote of the partners, Advantage Spectrum may not make any expenditure that would exceed, by more than 10 percent,

¹⁴⁹ See ATTACHMENT 1 at 45-46 (§§ 6.5(a), (b)).

¹⁵⁰ See *id.* at 46 (§ 6.5(c)).

¹⁵¹ See *id.* at 15-18 (§ 1.1 (definition of “Significant Matter”).

¹⁵² See Spectrum Bidco Limited Partnership Agreement at § 7.2.

¹⁵³ See *id.* at § 5.4(k).

¹⁵⁴ *Id.* at § 5.4(h).

¹⁵⁵ *Id.* at § 5.4(l).

the expenditures budgeted in the annual budget.¹⁵⁶ In addition, a super-majority vote is needed for Advantage Spectrum to “[m]ake any change to the Initial Budget or the annual budget in force, where such change would cause an expenditure to be increased by more than 10% above its budgeted amount in the Initial or annual budget in force.”¹⁵⁷

H. Technology Choice

Northstar is empowered to select the technology for its operations. Spectrum Bidco and Advantage Spectrum likewise do not appear to have provisions in their agreements regarding interoperability or technology choice.

I. Owning Real Property

Northstar is not prohibited from owning freehold real property. Spectrum Bidco and Advantage Spectrum do not have provisions in their agreements that prevent them from owning real property.

J. Designated Entity Management Fee

Northstar pays a management fee of \$700,000 per year to Northstar Manager. Spectrum Bidco does not appear to have a management fee. Advantage Spectrum pays to its General Partner, Frequency Advantage, L.P., an annual fee of \$50,000 per year for a period of 10 years.¹⁵⁸

¹⁵⁶ See Advantage Spectrum Limited Partnership Agreement at §§ 2.1 (definition of “Super-Majority Vote”), 5.3(d). Exception is made, *inter alia*, for expenditures made pursuant to any agreement or program properly authorized by the general partner. See *id.*

¹⁵⁷ *Id.* at § 5.3(j).

¹⁵⁸ See *id.* at § 5.5(a).

IV. BIDDING BEHAVIOR IS NOT RELEVANT TO ANALYZING WHETHER THE PARTIES HAVE CURED THE *DE FACTO* CONTROL ISSUES RAISED BY THE COMMISSION

In the *Remand Order*, the Bureau wrote that the Commission’s analysis in the *Northstar MO&O* explained “how specific features of the relationship between each Applicant and DISH, as evidenced by their various corporate agreements and by their bidding behavior throughout the auction, demonstrate that DISH exercises *de facto* control over Applicants.”¹⁵⁹ The Commission’s previous discussion of the parties’ “bidding behavior throughout the auction,” however, is not relevant to the Commission’s current analysis of whether the modification of the transactional terms discussed above cure what the Commission identified as DISH’s *de facto* control over Northstar.

As noted above, this matter is on remand from the D.C. Circuit.¹⁶⁰ In deciding to remand the Commission’s action, the Court was fully aware of the Commission’s stated concerns regarding the parties’ bidding conduct and analyzed that conclusion carefully in its decision.¹⁶¹ Nevertheless, the Court remanded the *Northstar MO&O* in order to allow Northstar to negotiate a cure for the Commission’s stated *de facto* control issues.¹⁶² It follows then that the parties’ bidding conduct cannot be relevant to the question on remand of whether the amendments to the transactional documents have cured the *de facto* control concerns.¹⁶³

¹⁵⁹ *Remand Order*, 33 FCC Rcd at 232 (footnote omitted).

¹⁶⁰ *See SNR*, 868 F.3d at 1025.

¹⁶¹ *See id.* at 1041-42.

¹⁶² *Id.* at 1025, 1046.

¹⁶³ *See* Letter to Rachael Bender, Office of Chairman Pai, Federal Communications Commission, from Mark F. Dever, Counsel to Northstar Wireless, LLC, and Ari Q. Fitzgerald, Counsel to SNR Wireless LicenseCo, LLC, ULS File Nos. 0006670613, 0006670667, at 4-6 (filed April, 2, 2018) (demonstrating, *inter alia*, that the bidding conduct at most informed the Commission’s *de facto* control analysis and that the Commission cannot now find the bidding

This is reflected in the *Remand Order*, which “provide[s] an opportunity for each Applicant to renegotiate its business arrangements with DISH and the other parties to its agreements in order to cure its ineligibility for the bidding credits it claimed in Auction 97 . . . ,”¹⁶⁴ but does *not* reopen questions regarding the parties’ bidding conduct. Nor could the Commission re-introduce this question because it is statutorily bound to “carry out the judgment of the court and . . . to forthwith give effect thereto.”¹⁶⁵ Indeed, consistent with this analysis, the government recently confirmed its view to the Supreme Court that DISH’s *de facto* control of Northstar identified by the Commission can be cured through amendments to the transactional documents.¹⁶⁶

In short, the Court’s remand in *SNR* coupled with the operation of section 402(h) render the parties’ bidding conduct irrelevant to the question currently before the Commission: whether the amendments to the parties’ transactional agreements cure what the Commission identified as DISH’s *de facto* control of Northstar.¹⁶⁷

conduct to be an impediment to negotiating a cure of the parties’ agreements without violating the D.C. Circuit’s mandate and raising significant due process issues).

¹⁶⁴ *Remand Order*, 33 FCC Rcd at 232.

¹⁶⁵ 47 U.S.C. § 402(h).

¹⁶⁶ Brief for the Respondents in Opposition at 21, *SNR Wireless LicenseCo. v. FCC*, Sup Ct. No. 17-1058 (May 2018) (“[i]f petitioners successfully amend their agreements with DISH to eliminate DISH’s *de facto* control and affiliate status, the dispute in this case will have no continuing practical importance.”).

¹⁶⁷ And, even if the Commission engaged in a *post hoc* examination of Northstar’s bidding behavior, none of Northstar’s actions during Auction 97, including but not limited to its business and strategic decisions to allocate resources to certain geographic areas and to withdraw certain bids, suggests control by another party. *See, e.g.*, Northstar Opposition at 41-58, 81-82.

V. CONCLUSION

For these reasons, the Commission should (a) conclude that, on remand from the D.C. Circuit, Northstar and DISH have cured the elements of their transaction that led the Commission to conclude that DISH exercised *de facto* control over Northstar; (b) grant Northstar's request for a very small business designated entity bidding credits in connection with ULS File Number 0006670613; (c) apply those bidding credits to the 261 licenses granted to Northstar after Auction 97; (d) grant to Northstar the 84 licenses on which it selectively defaulted after Auction 97; and (e) apply those bidding credits to the newly-granted 84 licenses.

Respectfully submitted,

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June 8, 2018

CERTIFICATE OF SERVICE

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† None of these petitioners included in its
Petition an address for service of this
document. The physical addresses set forth
here are based solely on information and
belief after conducting a reasonable search
and Attachment A of the *Remand Order*

/s/ Matthew G. Baker

Matthew G. Baker

REDACTED-FOR PUBLIC INSPECTION

ATTACHMENT 1

~~FIRST~~THIRD AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

of

NORTHSTAR SPECTRUM, LLC

by and between

NORTHSTAR MANAGER, LLC

and

AMERICAN AWS-3 WIRELESS II L.L.C.

Dated as of ~~October 13~~June 7, 20142018

THE MEMBERSHIP INTERESTS REPRESENTED BY THIS LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH INTERESTS MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR EXEMPTION THEREFROM AND COMPLIANCE WITH THE OTHER SUBSTANTIAL RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN.

THE MEMBERSHIP INTERESTS REPRESENTED BY THIS LIMITED LIABILITY COMPANY AGREEMENT ARE ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER SET FORTH IN THIS LIMITED LIABILITY COMPANY AGREEMENT.

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FIRSTTHIRD AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

FIRSTTHIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT of NORTHSTAR SPECTRUM, LLC, a Delaware limited liability company (the “Company”), ~~dated as of October 13, 2014~~effective as of June 7, 2018 (the “Effective Date”), by and between AMERICAN AWS-3 WIRELESS II L.L.C., a Colorado limited liability company (“American II”), and NORTHSTAR MANAGER, LLC, a Delaware limited liability company (“NSM”).

WHEREAS, the FCC ~~has~~ announced ~~that it will~~the auction of licenses to use spectrum in the 1695-1710 MHz and 1755-1780/2155-2180 MHz bands in an auction designated by the FCC as Auction Number 97 (the “Auction”) ~~and that is currently scheduled by the FCC to begin on November 13, 2014, as the same may be rescheduled or modified by the FCC;~~

WHEREAS, Congress ~~has~~ directed the FCC to promote economic opportunity and competition by disseminating licenses among a wide variety of applicants, including small businesses and businesses owned by members of minority groups, and to ensure that small businesses and businesses owned by members of minority groups are given the opportunity to participate in the provision of spectrum-based services;

WHEREAS, NSM includes Alaska Native Corporations formed under the Alaska Native Claims Settlement Act of 1971 who ~~desire to participate~~participated in the provision of spectrum-based services to secure economic opportunity for their shareholders, to develop telecommunications industry expertise for and on behalf of its shareholders and to provide innovative new wireless service offerings;

WHEREAS, in pursuit of these goals, NSM ~~desires~~desired to participate in the Auction together with American II; and was awarded certain licenses to use spectrum in the Auction;

WHEREAS, License Company, American II and the Company were party to the Original Credit Agreement (as defined below), pursuant to which License Company borrowed \$7,370,492,660 from American II and the Company guaranteed License Company’s obligations thereunder;

WHEREAS, American II exchanged six billion eight hundred seventy million four hundred ninety two thousand and six hundred sixty Dollars (\$6,870,492,660) of outstanding indebtedness owed to it by License Company under the Original Credit Agreement for 6,870,493 Class A Preferred Interests (as defined below) effective as of March 31, 2018;

WHEREAS, the FCC issued an order, Northstar Wireless, LLC, SNR Wireless LicenseCo, LLC, Applications for New Licenses in the 1695-1710 MHz, 1755-1780 MHz and 2155-2180 MHz Bands, Memorandum Opinion and Order, 30 FCC Rcd 8887 (2015), resulting in the denial of bidding credits to License Company;

WHEREAS, the United States Court of Appeals for the District of Columbia Circuit in SNR Wireless LicenseCo, LLC, et al. v. Federal Communications Commission, 868 F.3d 1021 (D.C. Cir. 2017) affirmed the FCC’s decision, in part, and remanded the matter to the FCC to

give NSM an opportunity to seek to negotiate a cure of the issues identified by the FCC in its order;

WHEREAS, as of September 12, 2014, American II and NSM entered into a Limited Liability Company Agreement of Northstar Spectrum, LLC relating to the matters set forth herein (“Original Agreement”), ~~and,~~which was amended and restated in the First Amended and Restated Limited Liability Company Agreement dated as of October 13, 2014 (the “First Amended Agreement”), and further amended and restated in the Second Amended and Restated Limited Liability Company Agreement dated as of March 31, 2018 (the “Second Amended Agreement”);

WHEREAS, the FCC has stated that Baker Creek Communications, LLC, Memorandum Opinion and Order, 13 FCC Rcd 18709, 18715 (1998), sets forth an illustrative list of typical investor protections, which the Company and American II adopted in the Second Amended Agreement;

WHEREAS, the Wireless Telecommunications Bureau (“WTB”) of the FCC determined that the investor protections rights specified in the application of Advantage Spectrum, L.P. (ULS File No. 0006668843, granted July 5, 2016), did not preclude the grant of bidding credits to that Auction applicant; and the Company and American II adopted materially similar contract rights in the Second Amended Agreement;

WHEREAS, the WTB expressed concerns with certain provisions related to the sale of NSM’s Interest, sales of licenses, rights of first refusals, tag-along rights, and the Put Right, and American II and NSM seek to amend this Agreement in response to those concerns; and

WHEREAS, pursuant to Section 14.2 of the ~~Original~~Second Amended Agreement, American II and NSM wish to amend and restate the ~~Original~~Second Amended Agreement to read as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, it is hereby agreed as follows:

ARTICLE 1 DEFINITIONS AND ORGANIZATION

Section 1.1. Definitions

Capitalized terms used in this Agreement without other definition shall, unless expressly stated otherwise, have the meanings specified in this Section 1.1.

“Act” means the Delaware Limited Liability Company Act, as amended from time to time.

“Additional Appraiser” is defined in Section 8.1(c)(vi).

“Adjusted Capital Account Deficit” means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(i) such Capital Account shall be deemed to be increased by any amounts which such Member is obligated to restore to the Company (pursuant to this Agreement or otherwise) or is deemed to be obligated to restore pursuant to the second to last sentence of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5) (relating to allocations attributable to nonrecourse debt); and

(ii) such Capital Account shall be deemed to be decreased by the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted and applied consistently therewith.

“Adverse FCC Action” is defined in ~~Section 14.14(a)~~[Section 14.14\(a\)](#).

“Adverse FCC Action Reformation” is defined in ~~Section 14.14(a)~~[Section 14.14\(a\)](#).

“Affiliate” means, with respect to a Person, any other Person that either directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with such Person at any time during the period for which the determination of affiliation is being made; provided, that the Members shall be deemed not to be Affiliates of the Company for purposes of this Agreement; provided, further, however, that for purposes of this Agreement, EchoStar Corporation and EchoStar Corporation’s direct and indirect subsidiaries will not be considered or deemed to be Affiliates of American II. For the avoidance of doubt, for purposes of this Agreement, American II is not an Affiliate of the Company.

“Agents” is defined in Section 10.2(a).

“Agreement” means this [Third Amended and Restated](#) Limited Liability Company Agreement, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with its terms.

“American II” is defined in the preamble.

“American II FMV Acceptance Notice” is defined in [Section 8.1\(c\)\(iii\)](#).

“American II Members” means American II and its transferees.

“Applicable Law” ~~shall mean~~[means](#) with respect to any Person, any federal, state, local or foreign law, statute, ordinance, rule, regulation, Judgment, order, injunction or decree or any interpretation or administration of any of the foregoing by any Governmental Authority, whether in effect as of the date of execution of this Agreement or thereafter, and in each case as amended, applicable to such Person or its Affiliates or their respective assets, including the FCC Rules.

“~~Appraiser~~Appraisal Anniversary” is defined in ~~Section 7.7~~Section 8.1(c)(i).

“Appraisal Option Parties” is defined in Section 8.1(c)(iii).

“Auction” is defined in the preamble.

“Auction Benefits” means the eligibility of the License Company and its Subsidiaries to hold any of the licenses for which the License Company is the Winning Bidder in the Auction the ability of the License Company and each of its Subsidiaries to realize the twenty five percent (25%) Bidding Credits that it derives from its status as a Qualified Person without the payment of unjust enrichment penalties with respect to such Bidding Credits.

“Auction Purchase Price” is defined in Section 2.2(c)(i).

“Bankruptcy” means, with respect to any Person:

(i) the filing by such Person of a voluntary petition seeking liquidation, dissolution, reorganization, rearrangement, readjustment or similar relief, in any form, of its debts under Title 11 of the United States Code (or corresponding provisions of future laws) or any other bankruptcy or insolvency law, or such Person's filing an answer consenting to, or acquiescing in any such petition, or the adjudication of such Person as a bankrupt or insolvent;

(ii) the making by such Person of any assignment for the benefit of its creditors or any similar action for the benefit of creditors, or the admission by such Person in writing of its inability to pay its debts as they mature;

(iii) the expiration of sixty (60) days after the filing of an involuntary petition under Title 11 of the United States Code (or corresponding provisions of future laws), an application for the appointment of a receiver for the assets of such Person, or an involuntary petition seeking liquidation, dissolution, reorganization, rearrangement or readjustment of its debts or similar relief under any bankruptcy or insolvency law, provided that the same shall not have been vacated, set aside or stayed within such ~~sixty day~~sixty (60) day period;

(iv) the giving of notice by such Person to any Governmental Authority of insolvency or pending insolvency or suspension or pending suspension of operations;

(v) the appointment (or such Person's seeking or acquiescing to such appointment) of any trustee, receiver, conservator or liquidator of such Person of all or any substantial part of its properties; or

(vi) the entry of an order for relief against such Person under Title 11 of the United States Code (or corresponding provisions of future laws) or any other bankruptcy or insolvency law.

The foregoing is intended to supersede and replace the events listed in Section 18-304(a) of the Act.

“Bidding Credit” means, with respect to any license for which the License Company was the Winning Bidder, an amount equal to the excess of the gross winning bid placed in the Auction by the License Company for such license over the net winning bid placed in the Auction by the License Company for such license.

“Bidding Protocol” means the Bidding Protocol and Joint Bidding Arrangement, dated as of September 12, 2014 (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with its terms), by and among Doyon, Limited, NSM, American II, the Company, the License Company and, for purposes of Sections 4 and 5 thereof only, American AWS-3 Wireless I L.L.C.

“Book Value” means, with respect to any asset of the Company, the asset's adjusted basis as of the relevant date for federal income tax purposes, except as follows:

- (i) the initial Book Value of any asset contributed by a Member to the Company shall be the Fair Market Value of such asset, as determined by the contributing Member and the Company with the concurrence of the Members other than the contributing Member;

- (ii) the Book Values of all Company assets (including intangible assets, such as goodwill) shall be adjusted to equal their respective Fair Market Values (as adjusted by Section 7701(g) of the Code) as of the following times:

- (A) the acquisition of an additional Interest by any new or existing Member in exchange for more than a *de minimis* capital contribution or for services;

- (B) the distribution by the Company to a Member of more than a *de minimis* amount of money or other Company property as consideration for an interest in the Company;

- (C) the termination of the Company for federal income tax purposes pursuant to Section 708(b) of the Code; and

- (D) immediately prior to incorporation of the Company (however effected, in connection with an initial public offering);

- (iii) the Book Value of any Company asset distributed to any Member shall be the Fair Market Value of such asset (as adjusted by Section 7701(g) of the Code) on the date of distribution;

- (iv) if the Book Value of an asset has been determined or adjusted pursuant to clause (i) or clause (ii) above, such Book Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses, and other items allocated pursuant to ARTICLE 4; and

- (v) the Book Value of Company assets shall be increased or decreased, as appropriate, to reflect any adjustments to the adjusted tax bases of such assets pursuant to

Sections 734(b) or 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and clause (v) of the definition of “Profits” and “Losses” set forth below; provided, however, that Book Values shall not be adjusted pursuant to this clause (v) to the extent that an adjustment pursuant to clause (ii) or (iii) hereof is required in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (v).

The foregoing definition of Book Value is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv) and shall be interpreted and applied consistently therewith.

“Business” means the business (conducted through the License Company and its Subsidiaries) of (i) acquiring licenses in the Auction ~~(and such other FCC licenses as the Members shall mutually agree)~~; (ii) the deployment of such licenses in a manner consistent with Applicable Law, including FCC Rules, whether by (A) owning, constructing and operating systems to provide wireless ~~broadband~~ services, (B) entering into one or more joint venture, lease, wholesale or other agreements or (C) any other means, ~~in each case (A) (C) using technology fully compatible and interoperable with the technology or technologies employed by American II and its Affiliates from time to time (without limiting the vendors from whom the equipment comprising such systems may be acquired) solely within the Company Territory,~~ (iii) marketing and offering the services and features described in clause (ii) ~~within the Company Territory~~, including advertising such services and features using broadcast and other media, ~~so long as such advertising extends beyond the Company Territory only when and to the extent necessary to reach customers and potential customers in the Company Territory and~~ (iv) any other activities ~~upon which the Members may mutually agree~~ which the Manager reasonably determines to be in the best interests of the Company.

“Business Day” means any day other than Saturday, Sunday, or other day on which commercial banks in New York, New York are authorized or required to close under the laws of the State of New York.

“Business Plan” means the Five-Year Business Plan and each annual business plan adopted in accordance with Section 6.5.

“Business Purpose” is defined in Section 1.7.

~~“Buyer” is defined in Section 10.4(a).~~

“Capital Account” is defined in Section 2.1(a).

“Cash Equity Investor” means each member of NSM other than Doyon, Limited, and each such member's successors and Permitted Transferees.

“Change of Control of NSM” means (i) any circumstance, event or transaction following which any Person or group (as such term is used in Sections 13(d) and 14(d) of the Exchange Act and the rules and regulations promulgated thereunder), other than the members of NSM as of October 10, 2014, and such members' Affiliates, is the “beneficial owner” (as such term is used

in Rules 13d-3, 13d-5 or 16a-1 under the Exchange Act) of at least 50.1% of the Voting Securities of NSM or otherwise has the power to control NSM; (ii) the sale or other disposition of all or substantially all of NSM's membership interests, business or assets (including through a merger or otherwise); (iii) a change of the sole managing member of NSM; or (iv) any amendment or modification of the limited liability company agreement of NSM which would have the effect of vesting control or management of NSM in any entity other than the sole managing member of NSM.

"Claim" is defined in Section 12.3(a).

"Class A Member" means, initially, American II as long as it has not ceased to be a Class A Member, and any Person who, at the time of the reference thereto, has been admitted to the Company as a Class A Member in accordance with the terms of this Agreement and has not ceased to be a Class A Member.

"Class A Percentage" means, as to a Class A Member, such Class A Member's percentage ownership of the Class A Preferred Interests as set forth herein. The current Class A Percentage of American II is one hundred percent (100%).

"Class A Preferred Interest" is defined in Section 2.2(e).

"Class B Common Interest" means the Interest of a Class B Member in its capacity as such.

"Class B Member" means, initially, American II and NSM as long as they have not ceased to be Class B Members, and any Person who, at the time of the reference thereto, has been admitted to the Company as a Class B Member in accordance with the terms of this Agreement and has not ceased to be a Class B Member.

"Class B Percentage" means, as to a Class B Member, such Class B Member's percentage ownership of the Class B Common Interests as set forth herein. The current Class B Percentage of American II is eighty-five percent (85%), and the current Class B Percentage of NSM is fifteen percent (15%).

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Company" is defined in the preamble.

"Company Minimum Gain" means the aggregate of the amounts of gain, if any, determined for each nonrecourse liability of the Company, that would be realized by the Company for federal income tax purposes if it disposed of the Company property subject to such liability in a taxable transaction in full satisfaction thereof and for no other consideration. To the extent the foregoing is inconsistent with Treasury Regulations Section 1.704-2(d) or incomplete with respect to such regulation, Company Minimum Gain shall be computed in accordance with such regulation.

~~“Company Territory” means the territory covered by the licenses for which the License Company was the Winning Bidder or thereafter acquired by the License Company (or its Subsidiaries) in accordance with the provisions of this Agreement.~~

“control,” “controlled” and “controlling” as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of Voting Securities, by contract or otherwise.

“Deemed Liquidation Event” means: (i) a merger, consolidation or similar transaction in which the Company is a constituent party (except any such merger, consolidation, or similar transaction in which the Company’s Members prior to such transaction own a majority of the equity securities of the surviving, resulting or acquiring entity in approximately the same relative percentages after such transaction as before such transaction); or (ii) the sale, license or lease of all or substantially all of the Company’s assets in a single transaction or series of related transactions.

“Depreciation” means, for each fiscal year or part thereof, an amount equal to the depreciation, amortization or other cost recovery deduction allowable for federal income tax purposes with respect to an asset for such year or other period, except that if the Book Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year, Depreciation shall be an amount which bears the same ratio to such Book Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year bears to such adjusted tax basis; provided that if the federal income tax depreciation, amortization or other cost recovery deduction for such year is zero, Depreciation shall be determined with reference to such Book Value using any reasonable method selected by the Manager.

“Economic Element” is defined in ~~Section 14.14(a)~~Section 14.14(a).

“Effective Date” is defined in the preamble.

“Equity Interests” means capital stock, partnership interests, limited liability company interests or other ownership or beneficial interests of any Person.

“Excess Cash” means all cash and cash equivalents held by the Company at the time of determination in excess of such amount required for the Company and its Subsidiaries to retain to satisfy the then current liabilities of the Company and its Subsidiaries and to provide a reasonable reserve for the future liabilities and then current and future operating expenses and capital expenditures of the Company and its Subsidiaries.

~~“Excess Purchase Price” is defined in Section 2.2(d).~~

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Face Amount” means the Initial Face Amount plus the value of any and all amounts added to the Initial Face Amount pursuant to Section 3.1 minus all Non-Liquidating Distributions

[paid pursuant to Section 3.2\(a\) to the Class A Members in accordance with their Liquidation Preference.](#)

“[Fair Market Value](#)” means, with respect to any asset, as of the date of determination, the cash price at which a willing seller would sell and a willing buyer would buy such asset in a transaction negotiated at arm's length, each being apprised of and considering all relevant facts, circumstances and factors, and neither acting under compulsion, with the parties being unaffiliated third parties acting without time constraints.

“[FCC](#)” means the Federal Communications Commission or any successor agency or entity performing substantially the same functions.

“[FCC Rules](#)” means the Communications Act of 1934, as amended by, *inter alia*, the Telecommunications Act of 1996, codified at 47 U.S.C. § 151 *et seq.*, as it may be amended in the future, including the rules and regulations established by the FCC and codified in Title 47 of the Code of Federal Regulations, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time hereafter, and effective orders, rulings, and public notices of the FCC.

[“First Amended Agreement” is defined in the preamble.](#)

[“First Put Window” is defined in Section 8.1\(a\).](#)

“[Five-Year Business Plan](#)” is defined in Section 6.5(a), as the same may be updated from time to time in accordance with the terms hereof.

[“FMV Report” is defined in Section 8.1\(c\)\(iv\).](#)

“[GAAP](#)” means generally accepted accounting principles as used in the United States by the Financial Accounting Standards Board and/or the American Institute of Certified Public Accountants, as in effect from time to time.

“[Governmental Authority](#)” means any government or political subdivision thereof, whether domestic or foreign, including any national, state, regional, provincial, county, city, municipal, local or other governmental department, ministry, commission, board, bureau, agency, regulatory body or authority, instrumentality, judicial or administrative body, having jurisdiction over the matter or matters in question, including the FCC.

“[Indemnified Person](#)” is defined in Section 12.1(b).

[“Independent Appraisers” is defined in Section 8.1\(c\)\(v\).](#)

“[Initial Application Date](#)” means September 12, 2014.

[“Initial Face Amount” is defined in Section 2.2\(e\).](#)

“Initial Grant Date” means, ~~with respect to any license for which the License Company is the Winning Bidder, the date on which such license is granted by the FCC as set forth on the face of such license~~ October 27, 2015.

“Inspectors” is defined in Section 9.6(h).

“Intercreditor and Subordination Agreement” means the First Amended and Restated Intercreditor and Subordination Agreement ~~dated as of the date of the Original Agreement~~ effective as of March 31, 2018 and entered into by American II and NSM (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with its terms).

“Interest” means the interest of a Member (or a Permitted Transferee of a Member pursuant to ARTICLE 7 which has not been admitted as a Member of the Company) in the aggregate distributions by the Company, and the aggregate allocations by the Company of Profits, Losses, income, gain, loss, deduction or credit or any similar item, and all other rights and interests of a Member of the Company.

“Interest Purchase Agreement” is defined in ~~Section 3.3~~ Section 3.4.

“IPO Price” is defined in Section 9.3.

“Joint Appraiser” is defined in Section 8.1(c)(iv).

“Judgment” ~~shall mean~~ means any judgment, writ, order, injunction, award or decree of any court, judge, justice or magistrate, including any bankruptcy court, or arbiter, and any order of or by any other Governmental Authority.

“license” means a license issued by the FCC authorizing the licensee to construct and operate radio transmitting facilities. Unless otherwise indicated, references to licenses in this Agreement shall refer to licenses to use spectrum in the 1695-1710 MHz and/or 1755-1780/2155-2180 MHz bands.

~~“License Closing” is defined in Section 10.4(b).~~

“License Company” means Northstar Wireless, LLC, a Delaware limited liability company and wholly-owned Subsidiary of the Company.

“License Company System(s)” means the fixed or mobile wireless system(s) licensed to, constructed and operated by, or to be constructed and operated by, the License Company and/or any License Company Subsidiaries for the purpose of providing service authorized under a license or licenses in each of the Markets.

~~“License Offer” is defined in Section 10.4(a).~~

~~“License Offer Notice” is defined in Section 10.4(a).~~

~~“License Payment Date” is defined in Section 2.2(e).~~

“Lien” means, with respect to any asset, any lien (including, without limitation, judgment liens and liens arising by operation of Applicable Law), mortgage, pledge, assignment, security interest, charge, right of first refusal or rights of others therein, or encumbrance of any nature whatsoever (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) in respect of such asset.

“Liquidation Event” means a liquidation, dissolution or cessation of the business of the Company.

“Liquidation Preference” means the sum of the then-current Face Amount of the Class A Preferred Interests and all accrued but unpaid distributions on such Class A Preferred Interests.

“Liquidator” is defined in Section 13.3(b).

~~“Management Agreement” means the Management Services Agreement, dated as of the date of the Original Agreement, by and between the License Company and the Management Company, as the same may be amended, modified, supplemented or amended and restated from time to time in accordance therewith.~~

~~“Management Company” means the Management Company under the Management Agreement, which initially is American II.~~

“Management Fee” is defined in ~~Section 6.6~~Section 6.6.

“Manager” means NSM for so long as it serves as the “manager” of the Company (within the meaning of the Act) in accordance with the provisions of this Agreement and, thereafter, any manager of the Company duly appointed in accordance with the terms hereof.

“Mandatory Quarterly Distributions” is defined in Section 3.1.

“Markets” shall mean the geographic area(s) in which License Company or any of its Subsidiaries is authorized by the FCC to provide fixed or mobile wireless services.

“Member” means, ~~initially, American II and NSM as long as they have not ceased to be Members, and any~~each Person who, ~~at the time of the reference thereto,~~ has been admitted to the Company as a Class A Member and/or Class B Member in accordance with the terms of this Agreement and has not ceased to be a Member, in such ~~Person's~~Person's capacity as a member (within the meaning of the Act) of the Company.

“Member Minimum Gain” means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a nonrecourse liability, determined in accordance with Treasury Regulations Section 1.704-2(i).

“Member Nonrecourse Debt” has the meaning ascribed to the term “partner nonrecourse debt” in Treasury Regulations Section 1.704-2(b)(4), and generally means any nonrecourse debt of the Company for which any Member bears the economic risk of loss (such as a nonrecourse loan to the Company by a Member or certain Affiliates of a Member).

“Member Nonrecourse Deduction” has the meaning ascribed to the term “partner nonrecourse deduction” in Treasury Regulations Section 1.704-2(i)(2). The amount of the Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt for a Company fiscal year equals the net increase, if any, in the amount of Member Minimum Gain attributable to such Member Nonrecourse Debt during that fiscal year, reduced (but not below zero) by the aggregate amount of any distributions during that fiscal year to the Member that bears the economic risk of loss for such Member Nonrecourse Debt to the extent such distributions are from the proceeds of such Member Nonrecourse Debt and are allocable to an increase in Member Minimum Gain attributable to such Member Nonrecourse Debt.

“Newco” is defined in Section 9.1.

“Non-American II Members” is defined in Section 14.14(a).

“Non-Conforming Appraisal” is defined in Section 8.1(c)(vi).

“Nonrecourse Deductions” has the meaning set forth in Treasury Regulations Section 1.704-2(c). The amount of Nonrecourse Deductions for a fiscal year equals the net increase, if any, in the amount of Company Minimum Gain during that fiscal year, reduced (but not below zero) by any Nonrecourse Distributions during such year.

“Nonrecourse Distributions” means the aggregate amount, as determined in accordance with Treasury Regulations Section 1.704-2(c), of any distributions during the fiscal year of proceeds of a nonrecourse liability, as defined in Treasury Regulations Section 1.704-2(b)(3), that are allocable to an increase in Company Minimum Gain.

“Non-Liquidating Distribution Record Date” means, with respect to any Non-Liquidating Distribution declared and paid pursuant to Section 3.2(a), the date that such Non-Liquidating Distribution is declared by the Company.

~~“Non-American II Members~~Non-Liquidating Distributions” is defined in ~~Section 14.14(a)~~Section 3.2(a).

“NSM” is defined in the preamble.

“NSM Capital” is defined in ~~Section 8.1~~Section 8.1(b).

“NSM Members” means NSM and its Permitted Transferees.

“NSM Pledge Agreement” is defined in ~~Section 3.3~~Section 3.4.

“NSM Return” is defined in ~~Section 8.1~~Section 8.1(b).

“NSM Security Agreement” is defined in ~~Section 3.3~~Section 3.4.

~~“Offered Interests” is defined in Section 7.3(a).~~

“Offering” is defined in Section 9.1.

~~“Offeror~~Original Agreement” is defined in ~~Section 7.3(a)~~the preamble.

“Original Credit Agreement” is defined in Section 2.2(e).

“Participating Members” is defined in Section 9.5.

~~“Percentage Interest” means, with respect to a Member, the percentage determined by dividing (i) the aggregate Unreturned Contributions made by such Member, by (ii) the aggregate Unreturned Contributions made by all Members; provided that at such time as the Unreturned Contributions of all Members are equal to zero, “Percentage Interest” shall be determined by the Percentage Interests of the Members immediately prior to the distribution that reduced the Members’ Percentage Interests to zero.~~

“Permitted Transferee” means, with respect to a Member, an Affiliate, a direct or indirect wholly-owned Subsidiary of such Member, and a direct or indirect wholly-owned Subsidiary of a Person of which such Member is a direct or indirect wholly-owned Subsidiary.

“Person” means any individual, corporation, partnership, firm, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, estate, incorporated or unincorporated organization, Governmental Authority or other entity.

“Profits” and “Losses” means, for each fiscal year or part thereof, the Company's taxable income or loss for such year determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss and deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss) with the following adjustments:

(i) any income of the Company that is exempt from federal income tax shall be added to such taxable income or loss;

(ii) any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as such pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) shall be subtracted from such taxable income or loss;

(iii) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, Depreciation for such fiscal year shall be taken into account;

(iv) if the Book Value of any Company asset is adjusted pursuant to clause (ii) or clause (iii) of the definition of Book Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(v) gain or loss resulting from the disposition of any Company asset with respect to which gain or loss is recognized for federal income tax purposes shall be computed with reference to the Book Value of the asset disposed of, notwithstanding that the adjusted basis of such asset differs from the Book Value of such asset;

(vi) to the extent an adjustment to the adjusted tax basis of any Company asset under Section 734(b) of the Code is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the adjusted tax basis of the asset) or an item of loss (if the adjustment decreases the adjusted tax basis of the asset) from the disposition of such asset and shall be taken into account for purposes of computing Profits and Losses; and

(vii) such taxable income or loss shall not be deemed to include items of income, gain, loss, or deduction allocated pursuant to Section 2.1(c)(iii) (to comply with Treasury Regulations under Section 704(b) of the Code), Section 4.3, Section 4.4 or Section 4.5.

“Put Price” is defined in ~~Section 8.1~~[Section 8.1\(b\)](#).

“Put Right” is defined in ~~Section 8.1~~[Section 8.1\(a\)](#).

“Qualified Person” means a Person that qualifies as a “very small business” under the terms of FCC Rules applicable to the Auction in effect on the Initial Application Date, including but not limited to Sections 1.2110(b)(1) and 27.1106(a)(2) of the FCC Rules in effect on the Initial Application Date.

“Quarterly Distribution Payment Date” means January 15, April 15, July 15 and October 15 of each year commencing April 15, 2018 (for the period from March 31, 2018 to, but excluding, April 15, 2018); provided, however, if any Quarterly Distribution Payment Date would fall on a date that is not a Business Day, that Quarterly Distribution Payment Date will be postponed to the next succeeding Business Day.

“Quarterly Distribution Period” means the period from, and including, a Quarterly Distribution Payment Date to, but excluding, the next Quarterly Distribution Payment Date, except that the initial Quarterly Distribution Period shall commence on, and include, March 31, 2018 and shall end on, and exclude, the first Quarterly Distribution Payment Date occurring after March 31, 2018.

“Quarterly Distribution Record Date” means, with respect to any Quarterly Distribution Payment Date, the first day of the month in which that Quarterly Distribution Payment Date occurs. These Quarterly Distribution Record Dates shall apply regardless of whether a particular Quarterly Distribution Record Date is a Business Day.

“Records” is defined in Section 9.6(h).

~~“Reference Date” means the fifth anniversary of the last Initial Grant Date.~~

“Related Agreements” means the Bidding Protocol, ~~the Management Agreement and the Trademark License Agreement.~~

“Required Tax Amount” is defined in ~~Section 3.1(b)~~[Section 3.2\(b\)](#).

~~“RoFR Closing” is defined in Section 7.3(b).~~

“SEC” means the Securities and Exchange Commission or any successor commission or agency having similar powers.

“Second Amended Agreement” is defined in the preamble.

“Second Put Window” is defined in Section 8.1(a).

“Securities Act” means the Securities Act of 1933, as amended.

~~“Sellers” is defined in Section 7.3(a)~~means NSM and, to the extent applicable, any other owners of NSM’s Interests.

“Senior Credit Facility” means the secured credit facility created by that certain ~~First~~Third Amended and Restated Credit Agreement, dated as of the date hereof, by and among the Company, the License Company and American II, including all schedules, attachments and exhibits thereto and the note, the pledge agreements, the security agreement and the other agreements ancillary thereto, as any of the same may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with their terms.

“Significant Breach” means (i) fraud, embezzlement or any other conduct by the Manager related to the Company or any of its Subsidiaries constituting a criminal or other material violation of Applicable Law; (ii) gross negligence, any knowingly dishonest act, or knowing bad faith or willful misconduct (in each case, which has a material negative impact on the Company and its Subsidiaries taken together as a whole), (A) by the Manager in the performance of its obligations under this Agreement, or (B) by the Company or any of its Subsidiaries in the performance of their respective obligations under any material agreement to which the Company or any such Subsidiary is a party or by which it is bound; (iii) voluntary or involuntary insolvency or Bankruptcy of the Manager; (iv) any action or omission by the Manager or the Company or any of its Subsidiaries (including any violation of or failure to comply with FCC Rules) that is reasonably likely to materially impair the ability of the License Company or any of its Subsidiaries to realize the Auction Benefits or result in the revocation or non-renewal of any FCC license; or (v) any material breach by the Manager of its obligations under this Agreement, unless such breach is cured within thirty (30) days following notice thereof by American II or other Members holding at least fifteen percent (15%) of the ~~Percentage Interests~~Class B Percentages, which notice shall specify in reasonable detail such alleged breach; provided that if such breach cannot be cured within thirty (30) days, then ninety (90) days as long as the Manager is diligently acting in good faith to cure such deviation or failure as soon as reasonably practicable; provided, further, that in the case of (ii)(B), (iv) and (v), such (x) gross negligence, knowingly dishonest act, or knowing bad faith or willful misconduct, (y) action or omission or (z) material breach was not caused (directly or indirectly, and whether as the ~~Management Company, the~~ lender under the Senior Credit Facility or otherwise) or expressly approved or authorized in writing by American II.

“Significant Matter” means ~~any~~each of the following: matters, in each case to the extent consistent with the decision in Baker Creek Communications, LLC, Memorandum Opinion and Order, 13 FCC Rcd 18709, 18715 (1998) and the Wireless Telecommunications Bureau’s

determination that the contractual rights specified in Advantage Spectrum, L.P. Form 601, ULS File No. 0006668843, LP Agreement – Advantage Spectrum (filed Mar. 20, 2015, Agreement Establishing Advantage Spectrum L.P., By and Between Frequency Advantage, L.P. and USCC Wireless Investment, Inc. entered into as of August 29, 2014, § 5.3), granted July 5, 2016, did not preclude the grant of bidding credits to that Auction applicant:

(i) the reclassification of Interests and the issuance of Interests in the Company directly from the Company to any Person and the admission of any such Person to the Company as a Member; provided, however, that this provision shall not restrict any issuance of additional Class A Preferred Interests in connection with any distributions made to Class A Members in respect of their Class A Preferred Interests pursuant to the terms of this Agreement as determined by the Manager in its sole discretion, or transfers of existing Interests in the Company, which shall be governed by ARTICLE 7;

(ii) setting compensation for senior management (provided that this shall not include compensation that is market-based);

~~(i) any offering, issuance, purchase, repurchase or reclassification of Interests or other Equity Interests or securities (including warrants, options or other rights convertible into or exchangeable for Equity Interests or securities in the Company or any of its Subsidiaries) by the Company or any of its Subsidiaries, except for issuances of Interests to one or more Members so long as the other Members have the right to participate in such issuances *pro rata* in accordance with their respective Percentage Interests;~~

~~(ii) any agreement or arrangement, written or oral, to which the Company or any of its Subsidiaries is a party, involving a payment or liability that, individually or in the aggregate for all such agreements and arrangements (during any twelve-month period), is greater than ten percent (10%) of the annual budget then in effect (other than any such agreements or arrangements approved in any duly adopted annual budget then in effect);~~

~~(iii) the incurrence, directly or indirectly (for example, by way of guarantee), by the Company or any of its Subsidiaries of indebtedness in excess of ten percent (10%) of the annual budget then in effect in the aggregate outstanding amount at any time for all such indebtedness (other than any such indebtedness approved in any duly adopted budget then in effect and~~ of any significant indebtedness in the name of the Company; the modification, extension, renewal, refinancing or restructuring of any significant debt; the pledge, assignment or otherwise use of any assets of the Company as security for any significant indebtedness or the action to obligate the Company as a surety, guarantor or accommodation party to any obligation or to any other Person (in each case, other than the obligations of the License Company and its Subsidiaries under the Interest Purchase Agreement and the NSM Security Agreement and the related Subsidiary guarantees and security agreement supplements);

~~(iv) the merger, combination or consolidation of the Company or any of its Subsidiaries with or into any Person other than the Company or a wholly-owned Subsidiary of the Company, regardless of whether the Company or any such Subsidiary is the survivor in any such merger, combination or consolidation; or the sale of all or~~

~~substantially all of the assets of the Company and its Subsidiaries taken as a whole~~liquidation or dissolution of the Company, the filing of a petition for bankruptcy, the consolidation or merger of the Company into or with any other Person or acquisition of any interest in any other Person or any significant portion of the assets of any other Person or agree to enter into any partnership or joint venture, except in the ordinary course of business;

(v) the making of any expenditure, or the agreement to make any expenditure, which would significantly affect the Company's market capitalization; and

~~(v) the initiation of any Bankruptcy proceeding, liquidation, dissolution or winding up of the Company or any of its Subsidiaries (other than the liquidation of a wholly owned Subsidiary of the Company into the Company or another wholly owned Subsidiary of the Company);~~

~~(vi) the acquisition by the Company or any of its Subsidiaries of any significant portion of assets from another Person; and the formation of any partnership or joint venture involving the Company or any of its Subsidiaries;~~

~~(vii) changes in the Business Purpose, including any decision by the Company to conduct its business or own any material assets directly or through any Person other than the License Company and its Subsidiaries;~~

~~(viii) any agreements or arrangements, written or oral, with an Affiliate of the Company or any of its Subsidiaries (whether or not on arm's length terms and conditions);~~

~~(ix) any action that is materially inconsistent with the Five-Year Business Plan;~~

~~(x) (A) termination of the Company's or any of its Subsidiaries' independent accountants or tax advisors unless such accountants or advisors are promptly replaced by a Big Four accounting firm or other accounting firm of nationally recognized standing (provided in each case such firm is an independent registered public accounting firm and will not create independence issues for American II under applicable federal and state securities laws), (B) appointment of the Company's or any of its Subsidiaries' independent accountants or tax advisors unless such accountants or advisors are a Big Four accounting firm or other accounting firm of nationally recognized standing (provided in each case such firm is an independent registered public accounting firm and will not create independence issues for American II under applicable federal and state securities laws), (C) material changes in tax or accounting methods or elections or (D) taking any tax position or making any tax election on behalf of the Company or any of its Subsidiaries;~~

~~(xi) the authorization or adoption of any amendment to the certificate of formation, limited liability company agreement or any other constituent document (including the exhibits and attachments thereto) of the Company or any of its Subsidiaries;~~

~~(xii) any agreement or arrangement, written or oral, to pay any director, officer, employee or agent of the Company or any of its Subsidiaries \$200,000 or more in any twelve-month period;~~

~~(xiii) any agreement or commitment by the Company or any of its Subsidiaries not to (A) compete with any other Person, which agreement or commitment continues following the payment of the Put Price, (B) solicit any other Person's business or customers or (C) solicit or hire any other Person's employees;~~

~~(xiv) the acquisition by the Company or any of its Subsidiaries of any new spectrum licenses (other than those acquired in the Auction);~~

~~(xv) any expenditure in excess of the lesser of: (i) \$2,000,000; or (ii) one percent (1%) of the net purchase price of the licenses for which the License Company is the Winning Bidder;~~

~~(xvi) any deviation of more than ten percent (10%) from any line item in any duly adopted annual budget then in effect;~~

~~(vi) (xvii) the sale of any asset outside the ordinary course of operation of the License Company Systems (, transfer, exchange, lease, mortgage, pledge or assignment or entry into any agreement for the sale, transfer, exchange, lease, mortgage, pledge or assignment of any major asset (where assets include, but are not limited to, licenses), or of all or substantially all of the Company's assets (including assets held by the Company's subsidiaries) (in each case, other than pursuant to the Interest Purchase Agreement, NSM Pledge Agreement and NSM Security Agreement);~~

~~(xviii) the sale to (A) any Person of any license prior to the fifth anniversary of the Initial Grant Date of such license if the Person acquiring the license is not a Qualified Person; or (B) any Person of any license at any time except for the licenses set forth on Schedule I to this Agreement to the extent the net winning bids associated with those licenses, either individually or together with licenses previously sold, do not exceed five percent (5%) of the Auction Purchase Price (other than, in any such case of (A) or (B), pursuant to the Interest Purchase Agreement, NSM Pledge Agreement and NSM Security Agreement); and~~

~~(xix) entering into any agreement or commitment to do any of the foregoing.~~

“Significant Violation” means (i) fraud, embezzlement or any other conduct by the Manager related to the Company or any of its Subsidiaries constituting a criminal or other material violation of Applicable Law, (ii) gross negligence, any knowingly dishonest act, or knowing bad faith or willful misconduct, (a) by the Manager in the performance of its obligations under this Agreement, or (b) by the Company or any of its Subsidiaries in the performance of their respective obligations under any material agreement to which the Company or any such Subsidiary is a party or by which it is bound, (iii) voluntary or involuntary insolvency or Bankruptcy of the Manager, (iv) any action or omission by the Manager or the Company or any of its Subsidiaries (including any violation of or failure to comply with FCC Rules) that is reasonably likely to materially impair the ability of the License Company or any of

its Subsidiaries to realize the Auction Benefits or result in the revocation or non-renewal of any FCC license owned by the Company or any of its Subsidiaries, or (v) any material breach by the Manager of its obligations under this Agreement, unless such breach is cured within thirty (30) days following notice thereof by American II or other Members holding at least twenty percent (20%) of the ~~Percentage Interests~~Class B Percentages, which notice shall specify in reasonable detail such alleged breach; provided that if such breach is capable of being cured but cannot be cured within thirty (30) days, then ninety (90) days as long as the Manager is diligently acting in good faith to cure such deviation or failure as soon as reasonably practicable; provided, further, that in the case of any of the foregoing in (i) through (v), such event has a material negative impact on the Company and its Subsidiaries taken together as a whole and was not caused (directly or indirectly, and whether as the ~~Management Company, the~~ lender under the Senior Credit Facility or otherwise) or expressly approved or authorized in writing by American II or any of its Affiliates.

“Subsidiary” of any Person means any other Person with respect to which either (i) more than fifty percent (50%) of the interests having ordinary voting power to elect a majority of the directors or individuals having similar functions of such other Person (irrespective of whether at the time interests of any other class or classes of such Person shall or might have voting power upon the occurrence of any contingency) or (ii) more than fifty percent (50%) of the Equity Interests of such other Person is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person's other Subsidiaries.

“Tax Matters Member” is defined in Section 5.5(d).

“Tax Shortfall Amount” is defined in ~~Section 3.1(b)~~Section 3.2(b).

~~“Third Party Offer” is defined in Section 7.3(a).~~

~~“Third Party Offer Notice” is defined in Section 7.3(a).~~

~~“Trademark License Agreement” means the Trademark License Agreement between the License Company and DISH Network L.L.C., dated as of the date of the Original Agreement, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with its terms.~~

“Transfer” means any direct or indirect transfer, sale, assignment, pledge, encumbrance or other disposition.

“Treasury Regulations” means regulations issued by the United States Department of the Treasury pursuant to the Code.

~~“Unreturned Contributions” means, with respect to a Member, an amount equal to such Member's cash contributions to the equity capital of the Company that are credited to such Member's Capital Account, less any distributions to such Member in excess of such Member's cumulative share of Profits.~~

“Voting Securities” means Equity Interests of a Person having the right to vote generally in the election of the directors (or persons performing equivalent functions) of such Person.

“Winning Bidder” shall mean a Person who is the winning bidder in the Auction for a license offered by the FCC therein (i) as set forth in the FCC's post-Auction public notice identifying Auction winning bidders or (ii) by virtue of having accepted the FCC's offer of a license for the amount of its final Auction net bid therefor following the default of the winning bidder for that license described in clause (i) of this definition; provided, that, for purposes of this Agreement, the License Company shall be deemed to not have been the winning bidder for the licenses in respect of which the License Company did not pay the gross winning bid amounts (as more fully described in that letter dated October 1, 2015 from Mark F. Dever (then of Drinker Biddle & Reath LLP) to Jean L. Kiddoo, Deputy Bureau Chief, Office of the Bureau Chief, Wireless Telecommunications Bureau of the FCC, and set forth on Attachment 2 to such letter).

“WTB” is defined in the preamble.

Section 1.2. Formation

The Company was formed as a Delaware limited liability company by filing a certificate of formation under the Act on September 3, 2014. The certificate of formation is in all respects approved and the Members hereby agree to continue the Company.

Section 1.3. Name

The name of the Company shall be Northstar Spectrum, LLC.

Section 1.4. Principal Place of Business

The Company's principal office and place of business shall be located at c/o Doyon, Limited, 1 Doyon Place, Suite 300, Fairbanks, Alaska 99701-2941.

Section 1.5. Registered Office; Registered Agent

The address of the registered office of the Company in the State of Delaware shall be c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808 or such other address as the Manager may determine. The name and address of the registered agent for service of process on the Company in the State of Delaware shall be Corporation Service Company, 2711 Centerville Road, Wilmington, New Castle County, Delaware 19808.

Section 1.6. Term

The term of the Company commenced on September 3, 2014 and, unless terminated in accordance with this Agreement, shall be perpetual.

Section 1.7. Purpose and Powers

The purposes of the Company are to establish and conduct the Business and to do any and all things reasonably necessary or advisable in connection therewith (the “Business Purpose”). The Company shall have the power and authority to take any and all actions necessary or advisable to or for the furtherance of said purposes.

Section 1.8. Filings

The Manager shall cause to be executed, filed and published all such certificates, notices, statements or other instruments, and amendments thereto, under the laws of the State of Delaware and other applicable jurisdictions as the Manager may deem necessary or advisable for the operation of the Company and to enable the Company to conduct business in each applicable jurisdiction.

Section 1.9. Sole Agreement

The Members intend that their obligations to each other with respect to the Company and the scope of the Company's activities, including any activities of its Subsidiaries, be as set forth in this Agreement, and that no further authority to bind the other or the Company or any liabilities to each other or any third party be inferred from the relationships described herein.

ARTICLE 2
CAPITALIZATION

Section 2.1. Capital Accounts

(a) Establishment

A separate capital account (“Capital Account”) was established for each Member as of the date of the Original Agreement.

(b) General Rules for Adjustment of Capital Accounts

The Capital Account of each Member shall be:

(i) increased by:

(A) the aggregate amount of such Member's cash contributions to the Company;

(B) the initial Book Value of property contributed by such Member to the Company;

(C) such Member's allocable share of Profits and items of income and gain allocated to such Member pursuant to Section 2.1(c)(iii) or ARTICLE 4 (other than Section 4.6 and Section 4.7(a));

(D) any positive adjustment to such Capital Account by reason of an adjustment to the Book Value of the Company assets; and

(E) the amount of Company liabilities assumed by such Member or which are secured by any property distributed to such Member; and

(ii) decreased by:

(A) cash distributions to such Member from the Company;

(B) the Book Value of property distributed in kind to such Member;

(C) such Member's allocable share of Losses and items of loss or deduction allocated to such Member pursuant to Section 2.1(c)(iii) or ARTICLE 4 (other than Section 4.7(a));

(D) any negative adjustment to such Capital Account by reason of an adjustment to the Book Value of Company assets;

(E) any amount charged to the Capital Account of such Member pursuant to Section 5.5(e); and

(F) the amount of any liabilities of such Member assumed by the Company or which are secured by property contributed by such Member to the Company.

(c) Special Rules

(i) Time of Adjustment for Capital Contributions. For purposes of computing the balance in a Member's Capital Account, no credit shall be given for any capital contribution which such Member is obligated to make until such contribution is actually made.

(ii) Capital Account for Transferred Interest. If any Interest in the Company or part thereof is Transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the Transferred Interest.

(iii) Intent to Comply with Treasury Regulations. The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such regulation. To the extent the provisions of this Agreement are inconsistent with such regulation or are incomplete with respect thereto, the Capital Accounts of the Members shall be maintained in accordance with such regulation except to the extent that doing so would materially distort the timing or amount of an allocation or distribution to a Member.

Section 2.2. Capital Contributions

(a) Initial Contribution

On September 12, 2014, NSM contributed one hundred fifty dollars (\$150) and American II contributed eight hundred fifty dollars (\$850) to the equity capital of the Company.

(b) Upfront Payment

On October 14, 2014, NSM contributed Eleven Million Four Hundred Thirty Thousand and No Dollars (\$11,430,000.00) in cash to the equity capital of the Company, and on October 15, 2014, American II contributed Sixty Four Million Seven Hundred Seventy Thousand and No Dollars (\$64,770,000.00) in cash to the equity capital of the Company, both via direct payment to the FCC on behalf of the License Company. The Company, in turn, immediately contributed such amounts to the equity capital of the License Company, which used such proceeds to make the upfront payment necessary to permit the License Company to bid on licenses in the Auction in accordance with the Bidding Protocol, and the balance of the capital needs of the License Company to fund such upfront payment was funded through the Senior Credit Facility.

(c) Auction Purchase Price Payment

~~At least two (2) Business Days prior to the FCC's deadline by which the post Auction down payment on any license for which the License Company was the Winning Bidder must be made (the "License Payment Date"):~~

~~(i) NSM shall contribute cash to the equity capital of the Company in an amount equal to 2.25% of the aggregate net purchase price (i.e., taking into account applicable Bidding Credits) of all licenses for which the License Company was the Winning Bidder (such aggregate net amount, the "Auction Purchase Price"), less (B) the amounts contributed by NSM pursuant to Section 2.2(a) and Section 2.2(b), which amount, together with the prior equity capital contributions by NSM, shall represent approximately fifteen percent (15%) of the equity capitalization of the Company at such time. Immediately following such contribution, the Company shall contribute such cash to the equity capital of the License Company.~~

~~(ii) American II shall contribute cash to the equity capital of the Company in an amount equal to 12.75% of the Auction Purchase Price, less (B) the amounts contributed by American II pursuant to Section 2.2(a) and Section 2.2(b), which amount, together with the prior equity capital contributions by American II, shall represent approximately eighty five (85%) of the equity capitalization of the Company at such time. Immediately following such contribution, the Company shall contribute such cash to the equity capital of the License Company. Notwithstanding the foregoing, American II shall have no obligation to make the contribution set forth in this Section 2.2(c)(ii) if NSM, either directly or through the Company (but not the Bidding Manager (as defined in the Bidding Protocol) acting on its own volition or in accordance with the Bidding Protocol), causes the License Company to bid on a license that was not a Target License (as defined in the Bidding Protocol) as set forth in the Bidding Protocol or causes the License Company to purchase a Target License by bidding materially in excess of the established bid limits for~~

~~such license, in each case, without the prior written consent of American II, which consent may be delivered by email, facsimile or otherwise and which consent shall be deemed given if the member of the Auction Committee (as defined in the Bidding Protocol) appointed by American II has approved thereof.~~

~~(iii) The Company shall cause the License Company to use the amounts set forth in Section 2.2(a), Section 2.2(b), Section 2.2(c)(i) and Section 2.2(c)(ii), together with other funds borrowed by the License Company under the Senior Credit Facility or other senior and/or subordinated debt from lenders other than American II, as may be necessary to timely pay to the FCC all amounts owed in respect of the Auction Purchase Price.~~

(i) ~~(iv)~~ On or prior to February 13, 2015, NSM contributed \$100,313,836.50 in cash to the equity capital of the Company, and American II contributed \$568,445,073.50 in cash to the equity capital of the Company, which contributions were made via direct payment to the FCC on behalf of the License Company, and constituted capital contributions hereunder. For purposes of ~~Section 8.1~~Section 8.1, NSM's \$100,313,836.50 capital contribution shall be deemed to have been deposited on February 11, 2015. Immediately following such contributions, the Company contributed such cash to the equity capital of the License Company.

(ii) ~~(v)~~ On or prior to March 2, 2015, NSM contributed \$20,641,540.88 in cash to the equity capital of the Company, and American II contributed \$116,968,731.62 in cash to the equity capital of the Company, which contributions were made via direct payment to the FCC on behalf of the License Company, and constituted capital contributions hereunder. For purposes of ~~Section 8.1~~Section 8.1, NSM's \$20,641,540.88 capital contribution shall be deemed to have been deposited on February 11, 2015. Immediately following such contributions, the Company contributed such cash to the equity capital of the License Company.

(d) No Additional Commitments

Other than as set forth in this ~~Section 2.2~~Section 2.2, neither NSM nor American II shall be required to contribute any additional capital to the Company. ~~Notwithstanding any provision of this Agreement to the contrary, in no event shall the total equity capital contributions to the Company (i) by NSM exceed the lesser of One Hundred Fifty Million and No Dollars (\$150,000,000.00) or 2.25%~~

(e) Exchange of Indebtedness for Preferred Equity

~~As of the Auction Purchase Price and (ii) by American II exceed the lesser of Eight Hundred Fifty Million and No Dollars (\$850,000,000.00) or 12.75% of the Auction Purchase Price; provided, that if the Auction Purchase Price exceeds \$6,666,666,667 (the amount of such excess is referred to herein as the "Excess Purchase Price"), then NSM shall have the right (but not the obligation) to contribute additional capital to the Company in any amount up to 2.25% of the Excess Purchase Price at any time up to and including the date which is forty-five (45) days following the FCC's deadline by which the post Auction final payment on any license for which the License Company was the Winning Bidder must be made. If NSM elects to contribute any~~

~~such additional capital to the Company then (x) if NSM contributes such additional capital on or prior to the License Payment Date, then American II shall contribute (at the same time) an amount equal to 5.667 times such additional capital contribution of NSM (and the balance of the Excess Purchase Price shall be funded by American II under and pursuant to the Senior Credit Facility) or (y) if NSM contributes such additional capital after the License Payment Date, then outstanding principal under the Senior Credit Facility (and the Note thereunder) in an amount equal to 5.667 times such NSM additional capital contribution shall be deemed repaid and such amount shall instead be deemed contributed to the Company by American II, and the amount of the NSM additional contribution shall be contributed by the Company to the License Company, and the License Company shall use such capital to make a prepayment under the Senior Credit Facility (unless American II and the Manager mutually agree to another use of such capital).~~ March 31, 2018, American II exchanged six billion eight hundred seventy million four hundred ninety two thousand and six hundred sixty Dollars (\$6,870,492,660) (the “Initial Face Amount”) of the amounts outstanding and owed to it under the First Amended and Restated Credit Agreement among License Company, American II and the Company dated as of October 13, 2014, (as amended through March 31, 2018, the “Original Credit Agreement”), for 6,870,493 Class A Preferred Interests, par value \$1,000 (the “Class A Preferred Interests”), with the rights and preferences described in this Section 2.2(e). The parties hereto agree and acknowledge that the Initial Face Amount of indebtedness under the Original Credit Agreement was exchanged for 6,870,493 Class A Preferred Interests and was extinguished and discharged with immediate effect as of March 31, 2018. American II released the Company and License Company from all obligations with respect to the Initial Face Amount of indebtedness exchanged for Class A Preferred Interests. The Class A Preferred Interests shall be non-voting and non-participating. The Class A Preferred Interests shall not have any preemptive rights or co-sale rights, though American II shall retain its consent rights over Significant Matters pursuant to Section 6.3 hereof.

Section 2.3. No Withdrawals

Except as expressly set forth herein, no Member shall be entitled to withdraw any portion of its capital contribution or Capital Account balance.

Section 2.4. No Interest

Except as expressly set forth herein, no Member shall be entitled to receive any interest or similar return on its capital contributions or Capital Account balance.

Section 2.5. Interests are Securities

Each Interest shall constitute a “security” within the meaning of and shall be governed by (a) Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of Delaware and (b) the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995.

Section 2.6. Certification of Interests

Interests shall be issued in non-certificated form; provided that at the request of any Member, the Manager shall cause the Company to issue certificates to the Members representing the Interests held by the Members. If any Interest certificate is issued, then such certificate shall bear a legend substantially in the following form:

This certificate evidences a membership interest representing an interest in Northstar Spectrum, LLC and shall constitute a “security” within the meaning of and shall be governed by (i) Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of Delaware, and (ii) the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995.

The membership interest in Northstar Spectrum, LLC represented by this certificate is subject to restrictions on transfer set forth in that certain Third Amended and Restated Limited Liability Company Agreement of Northstar Spectrum, LLC, dated as of ~~September 3~~June 7, 2014~~2018~~, by and among the members from time to time party thereto, as the same may be amended from time to time.

The membership interest in Northstar Spectrum, LLC represented by this certificate has not been registered under the United States Securities Act of 1933, as amended, or under any other applicable securities laws. Such membership interest may not be sold, assigned, pledged or otherwise disposed of at any time without effective registration under such Act and laws or, in each case, exemption therefrom.

Section 2.7. Failure to Fund

American II acknowledges that if the License Company is the Winning Bidder for one or more licenses and (a) it is determined in any arbitration proceeding (whether under this Agreement or under the Senior Credit Facility or any Related Agreement) or (b) if American II admits in writing, in either case (a) or (b), that American II failed to fund any amounts required to be funded by it under this Agreement or the Senior Credit Facility and that such failure to fund caused the License Company to be or become in default under the FCC Rules (including, without limitation, the provisions of 47 C.F.R. Section 1.2109), then NSM, the Company and its Subsidiaries will have all remedies available to them in law and in equity (including specific performance).

ARTICLE 3
DISTRIBUTIONS

Section 3.1. Mandatory Quarterly Distribution

The Class A Preferred Interests will accrue distributions during each Quarterly Distribution Period at the rate of twelve percent (12%) per annum until the Effective Date, and the rate of eight percent (8%) per annum from and after the Effective Date, calculated based on actual days elapsed in a year of 365 or 366 days, as applicable, on the then-current Face Amount of the Class A Preferred Interests. Distributions on the Class A Preferred Interests will be made on a mandatory basis each quarter. Each Class A Member on the applicable Quarterly Distribution Record Date shall be entitled to receive (regardless of whether such Class A Member remains a Class A Member of record on the applicable Quarterly Distribution Payment Date), distributions accrued to but excluding the applicable Quarterly Distribution Payment Date (“Mandatory Quarterly Distributions”), by 5:00 pm, New York City time, on such Quarterly Distribution Payment Date in respect of the Quarterly Distribution Period then ended. Any and all such Mandatory Quarterly Distributions may be paid either (i) in cash, (ii) by adding such amounts to the then-current Face Amount or (iii) in a combination of cash and additional Face Amount, and the method of payment will be in the sole and absolute discretion of the Manager. In the event that the Manager elects to pay all or part of any Mandatory Quarterly Distribution in cash, the Company shall request wire transfer instructions from each Class A Member as of the relevant Quarterly Distribution Record Date at least five (5) Business Days prior to the relevant Quarterly Distribution Payment Date. All such Mandatory Quarterly Distributions paid in cash shall be paid by wire transfer of funds legally available for the payment of distributions under Delaware law to the accounts designated by the Class A Members entitled to payment. Upon a Liquidation Event or a Deemed Liquidation Event, the Liquidation Preference shall become due and payable to the Class A Members, subject to the limitations contained in this Section 3.1, Section 8.1 and Section 13.3(d)(i).

Section 3.2. ~~Section 3.1.~~ Non-Liquidating Distributions

~~(a) Non-liquidating distributions shall be made in accordance with the Members' respective Percentage Interests; provided, however, that, except as provided in Section 3.1(b), no such distribution shall be declared or made without the approval of each Member unless (i) any such declaration or distribution does not and will not result in any breach of any covenant, condition or obligation required to be performed by the Company or the License Company under any material agreement to which it is a party or by which it is bound and (ii) after giving effect to such proposed distribution, the aggregate amount of all distributions paid or made in any fiscal year (including distributions pursuant to Section 3.1(b)) would be less than fifty percent (50%) of the consolidated net income of the Company (without giving effect to extraordinary gains or extraordinary losses) for the fiscal year immediately preceding the fiscal year in which such distribution is declared or made.~~

(a) The Company may at any time, other than in connection with a Liquidation Event or Deemed Liquidation Event, and separately from and in addition to the Mandatory Quarterly Distributions and the distributions provided for in Section 3.2(b), declare and pay cash distributions to the Class A Members out of funds legally available for the payment of

distributions under Delaware law (“Non-Liquidating Distributions”). The Company shall request wire transfer instructions from each Class A Member as of the relevant Non-Liquidating Distribution Record Date at least five (5) Business Days prior to the date that the Company sets for the payment of such Non-Liquidating Distributions. Non-Liquidating Distributions shall be made *first*, to the Class A Members as of the Non-Liquidating Distribution Record Date in respect of any unpaid distributions under this Agreement with respect to their Class A Preferred Interests until all such unpaid distributions have been paid, *second*, to the Class A Members as of the Non-Liquidating Distribution Record Date in accordance with their Liquidation Preference until the Liquidation Preference has been paid in full and *third*, to the Class B Members as of the Non-Liquidating Distribution Record Date in proportion to their Class B Percentages. The Manager shall have the sole and absolute discretion to declare and pay any Non-Liquidating Distributions. For the avoidance of doubt, Mandatory Quarterly Distributions paid pursuant to Section 3.1 shall be mandatory and not subject to the Company’s discretion, except that the Manager shall have sole discretion on the method of payment.

(b) Notwithstanding the provisions of ~~Section 3.1(a)~~ Section 3.2(a), within thirty (30) days after the end of each fiscal quarter other than the fiscal quarter in which the proceeds from a liquidation are distributed in accordance with ~~Section 3.2~~ Section 3.3, the Company shall make distributions to each Member in amounts that are at least sufficient to ~~provide such Member with an amount~~ allow each Member to pay income tax obligations arising from its respective membership interests in the Company (the “Required Tax Amount”) ~~equal to the estimated amount of all quarterly Federal, state, local and foreign income tax payments that such Member (or its direct and indirect equity owners) would be required to make with respect to such fiscal quarter attributable to the taxable income allocated to (or reasonably estimated to be allocable to) such Member in respect of his, her or its Interest with respect to such fiscal quarter (but in no event more than the net cumulative taxable income allocated to the Member by the Company for such quarter and all preceding quarters), which estimate shall be made by the Manager or a Person designated by the Manager based on information supplied by each such Member as to the maximum tax rates applicable in the jurisdictions in which such Member is so taxable and without regard to any net operating loss carryforwards or similar tax attributes of such Member; provided, that the~~ which shall be calculated based on the Assumed Tax Rate. “Assumed Tax Rate” means the highest effective marginal combined U.S. federal, state and local income tax rate for a fiscal year prescribed for an individual or corporate resident in New York, New York (taking into account (a) the nondeductibility of expenses subject to the limitation described in Section 67(a) and Section 68 of the Code, (b) the character (e.g., long-term or short-term capital gain or ordinary or exempt income) of the applicable income, and (c) the extent to which state and local income taxes are deductible for U.S. federal income tax purposes). For the avoidance of doubt, the Assumed Tax Rate will be the same for all Members and items of loss or deduction previously allocated to a Member and not taken into account in a manner that reduced tax distributions to such Member shall be taken into account in determining a Member’s income tax obligations arising from their respective membership interests in the Company for purposes of this provision. The total amount of such tax distributions shall not exceed the amount of Excess Cash then held by the Company (except that the Manager may, in its discretion, cause the License Company to borrow amounts available for such purpose under the Senior Credit Facility and cause the License Company to distribute such borrowed amounts to the Company, to enable the Company to make tax distributions hereunder); provided, further, that, in the event that the amount otherwise required to be distributed to the Members pursuant to this ~~Section 3.1(b)~~

Section 3.2(b) for such fiscal quarter, as estimated by the Manager, exceeds the amount of Excess Cash then held by the Company, such that the aggregate distributions made pursuant to this ~~Section 3.1(b)~~ Section 3.2(b) with respect to such fiscal quarter are less than such amount otherwise required to be distributed to the Members pursuant to this ~~Section 3.1(b)~~ Section 3.2(b) for such fiscal quarter (such shortfall, the “Tax Shortfall Amount”), then the Company shall make ~~one or more~~ initial tax distributions under this Section 3.2(b) to the members in proportion to their rights to tax distributions and shall make additional tax distributions in an aggregate amount equal to the Tax Shortfall Amount to the Members at such time as the Company holds sufficient Excess Cash to fund, in whole or in part, such remaining Tax Shortfall Amount (or portion thereof). Distributions to a Member under this Section 3.2(b) shall be treated as advances in respect of amounts subsequently distributable to such Member (or a successor to such Member) under Section 3.1, Section 3.2(a), Section 13.3(d)(iii) and Section 13.3(d)(iv) and shall reduce such amounts on a dollar-for-dollar basis.

Section 3.3. ~~Section 3.2.~~ Liquidating Distributions

Subject to Section 6.3, distributions to the Members of cash or property in connection with ~~the liquidation, dissolution or winding up of the Company~~ a Liquidation Event or Deemed Liquidation Event shall be made in accordance with Section 13.3.

Section 3.4. ~~Section 3.3.~~ Interest Purchase Agreement, Security Agreement and Pledge Agreement

The parties hereto acknowledge that, effective as of June 7, 2018, the License Company, ~~on September 12, 2014~~, executed and delivered in favor of NSM ~~an~~ a Second Amended and Restated Interest Purchase Agreement (the “Interest Purchase Agreement”), and on September 12, 2014 executed and delivered in favor of NSM a Security Agreement (the “NSM Security Agreement”) and a Pledge Agreement (the “NSM Pledge Agreement”). Within one (1) Business Day of the date upon which any Subsidiary of the License Company is formed, the Company shall cause the License Company to cause such Subsidiary to execute and deliver to NSM (a) a guarantee of the License Company's obligations under the Interest Purchase Agreement in the form attached as an exhibit to the Interest Purchase Agreement and (b) a security agreement supplement in the form attached as an exhibit to the NSM Security Agreement. In addition, within one (1) Business Day of the date upon which any Subsidiary of the License Company holding licenses is formed, the Company shall cause the License Company to take the actions required under the NSM Pledge Agreement to perfect NSM's first priority Lien in the outstanding equity interests of such Subsidiary. The parties hereto also acknowledge and agree that, notwithstanding the provisions of ~~Section 3.1~~ Section 3.2, the License Company and its Subsidiaries may make payments to NSM in exchange for membership interests in the Company pursuant to the provisions of the Interest Purchase Agreement, the NSM Security Agreement and the NSM Pledge Agreement and such related Subsidiary guarantees and security agreement supplements when due, subject to the provisions of the Senior Credit Facility and the Intercreditor and Subordination Agreement. All such payments to NSM in respect of the obligations of the License Company and its Subsidiaries under the Interest Purchase Agreement or related guarantees, and all proceeds received by NSM in connection with its exercise of remedies under the NSM Security Agreement or related security agreement supplements, shall be credited against the obligations of the License Company and its Subsidiaries under the Interest

Purchase Agreement and related guarantees, and, if necessary to avoid duplication in respect of any payments or distributions by the Company to the NSM Members in respect of their Interests, the amount of all such payments or proceeds, as applicable, shall be deemed to be a distribution to the Company (and by the Company to NSM) constituting a return of the NSM Members' capital contributions to the Company on a *pro rata* basis. NSM shall not amend or waive, nor shall the Company permit the License Company or its Subsidiaries to amend or waive, any term or provision of the Interest Purchase Agreement, the NSM Security Agreement or the NSM Pledge Agreement or the related Subsidiary guarantees or security agreement supplements, without the prior written consent of American II in its sole discretion.

ARTICLE 4 ALLOCATIONS

Section 4.1. Profits and Losses

(a) After giving effect to the special allocations set forth in Section 4.3 through Section 4.5, Profits with respect to any fiscal year shall be allocated ~~(a) first, to the Members with negative Capital Account balances in proportion to and to the extent of such negative Capital Account balances; (b) second, to the Members as necessary so that their respective Capital Accounts are in the same proportion as their Percentage Interests and then (c) third, to the Members in accordance with their respective Percentage Interests; provided that in no event shall an amount of Profits be allocated to NSM that would cause NSM's Capital Account to exceed the Put Price described in Section 8.1 as follows:~~

~~Section 4.2. Losses~~

~~(a) General Rule~~

(i) Profits shall first be allocated to those Members that have Capital Accounts that are in deficit, in proportion to their deficits, until there are no remaining deficits;

(ii) Any remaining Profits shall be allocated to the Class A Member until the aggregate amount allocated to the Class A Member for all periods pursuant to this Section 4.1(a)(ii) equals the sum of (1) the excess of (x) the sum of (I) the Face Amount (as determined without regard to any Non-Liquidating Distributions under Section 3.2(a)), (II) any Mandatory Quarterly Distributions that have been paid in cash and (III) any accrued but unpaid Mandatory Quarterly Distributions over (y) the Initial Face Amount and (2) the aggregate amount of prior allocations of Losses for all periods pursuant to Section 4.1(b)(iii); and

(iii) Any remaining Profits shall be allocated to the Class B Members in accordance with their Class B Percentages.

~~(b) After giving effect to the special allocations set forth in Section 4.3 through Section 4.5 and, subject to Section 4.2(b), the Losses with respect to any fiscal year shall be allocated to American II; provided that any allocation of Losses pursuant to the preceding clause that would cause American II's Capital Account to be less than an amount equal to (i) American~~

~~II's cash contributions to the equity capital of the Company that are credited to American II's Capital Account less (ii) any distributions to American II in excess of American II's cumulative share of Profits, shall instead be made to the Members in accordance with their respective Percentage Interests in the following order:~~

(i) Losses shall first be allocated to the Class B Members in proportion to their Class B Percentages until the aggregate amount allocated under this Section 4.1(b)(i) for all periods equals the aggregate amount allocated pursuant to Section 4.1(a)(iii) for all periods;

(ii) Remaining Losses shall be allocated to the Class B Members in proportion to their Capital Accounts as of the Effective Date (determined after taking into account allocations under Section 4.1(d) of items arising through the Effective Date and any Profit or Losses attributable to the revaluation for Book Value purposes of the Company's assets in connection with the conversion described in Section 2.2(e), but not taking into account any portion of a Capital Account attributable to the contribution associated with the conversion provided for in Section 2.2(e)) until the aggregate amount allocated under this Section 4.1(b)(ii) for all periods equals the excess of (x) the sum of the Members' Capital Accounts as of the Effective Date (determined as described above) over (y) the aggregate amount of any Non-Liquidating Distributions made after the Effective Date to the Class B Members in proportion to their Class B Percentages;

(iii) Remaining Losses shall be allocated to the Class A Members until the aggregate amount allocated under this Section 4.1(b)(iii) for all periods equals the sum of (x) the Face Amount and (y) the aggregate amounts allocated to the Class A Members for all periods under Section 4.1(a)(ii);

(iv) Any remaining Losses shall be allocated to the Class B Members in proportion to their Class B Percentages.

(c) In the event that there is more than one Class A Member, any allocations to the Class A Members pursuant to this ARTICLE 4 shall be made to the Class A Members in proportion to their Class A Percentages.

(d) Notwithstanding the foregoing, (i) Profits and Losses through the Effective Date shall be allocated under the provisions of the Company's limited liability company agreement as in effect prior to this Agreement and (ii) in no event shall, prior to such time as NSM's Put Right under Section 8.1 has expired unexercised, an amount of Profits be allocated to NSM that would cause NSM's Capital Account to exceed the Put Price described in Section 8.1.

(e) References to a Member in this Section 4.1 shall be treated as including references to a predecessor or successor to such Member as necessary to effectuate the intent of this Section 4.1.

Section 4.2. Losses

(a) ~~(b)~~ Limitation on Losses

Losses allocable to any Member pursuant to ~~Section 4.2(a)~~ Section 4.1 with respect to any fiscal year shall not exceed the maximum amount of Losses that may be so allocated without causing such Member to have an Adjusted Capital Account Deficit at the end of such fiscal year. All Losses in excess of the limitation set forth in this ~~Section 4.2(b)~~ Section 4.2(a) shall be allocated: (i) first, to the Class B Members that will not be subject to this limitation, ratably based on the aggregate of their ~~Percentage-Interests~~ Class B Percentages, to the extent possible until such Class B Members become subject to this limitation; ~~and~~ (ii) second, to the Class A Member to the extent it will not be subject to this limitation, to the extent possible until such Class A Member becomes subject to this limitation, and (iii) any remaining amount, to the Class B Members, ratably based on their ~~Percentage-Interests~~ Class B Percentages, unless otherwise required by the Code or Treasury Regulations.

Section 4.3. Special Allocations

The following special allocations shall be made for any fiscal year of the Company in the following order of priority:

(a) Minimum Gain Chargeback

Notwithstanding any other provision of this ARTICLE 4, if there is a net decrease in Company Minimum Gain (determined without regard to Member Nonrecourse Debts) during any fiscal year, each Member shall, subject to the exceptions provided in Treasury Regulations Section 1.704-2(f), be specially allocated items of income and gain for such fiscal year (and, if necessary, subsequent fiscal years) equal to such Member's share of the net decrease in Company Minimum Gain (determined without regard to Member Nonrecourse Debts) within the meaning of Treasury Regulations Section 1.704-2(g)(2). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(i)(6) and 1.704-2(i)(2). To the extent that this Section 4.3(a) is inconsistent with Treasury Regulations Section 1.704-2(f), the Minimum Gain Chargeback provided for herein shall be applied and interpreted in accordance with such Treasury Regulation.

(b) Member Minimum Gain Chargeback

If there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt during any Company fiscal year, each Member that, as of the beginning of such year, has a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(5), shall, subject to the exceptions provided in Treasury Regulations Section 1.704-2(f), be specially allocated items of income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt determined in accordance with Treasury Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be

allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(i)(4) and 1.704-2(i)(2). To the extent that this Section 4.3(b) is inconsistent with Treasury Regulations Section 1.704-2(i), the Member Minimum Gain chargeback provided for herein shall be applied and interpreted in accordance with such regulation.

(c) Qualified Income Offset

Notwithstanding anything herein to the contrary, but only if required by Treasury Regulations Section 1.704-1(b) in order for the allocations provided for herein to be considered to have substantial economic effect or to be deemed to be in accordance with the Member's ~~Percentage~~ Interests, if, for any fiscal year, a Member unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), and such adjustment, allocation or distribution causes or increases an Adjusted Capital Account Deficit with respect to such Member, then, before any other allocations are made, such Member shall be allocated items of income and gain (consisting of a *pro rata* portion of each item of Company income, including gross income and gain) in the amount and manner sufficient to eliminate such Adjusted Capital Account Deficit as quickly as possible. This Section 4.3(c) is intended to comply with Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(d) Nonrecourse Deductions

Nonrecourse Deductions shall be allocated to American II; provided, that any allocation of Losses pursuant to the preceding clause that would cause American II's Capital Account to be less than an amount equal to (i) American II's cash contributions to the equity capital of the Company that are credited to American II's Capital Account less (ii) any distributions to American II in excess of American II's cumulative share of Profits, shall instead be made to the Class B Members in ~~accordance with their respective Percentage Interests~~ proportion to their Class B Percentages.

(e) Member Nonrecourse Deductions

Any Member Nonrecourse Deductions for any fiscal year or other period shall be allocated to the Member that bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i).

Section 4.4. Curative Allocations

The allocations set forth in Section 4.3(a) through (e) are intended to comply with certain regulatory requirements under Section 704(b) of the Code. The Members intend that, to the extent possible, all allocations made pursuant to such Sections will, over the term of the Company, be offset either with other allocations pursuant to Section 4.3 or with special allocations of other items of Company income, gain, loss, or deduction pursuant to this Section 4.4. Accordingly, the Manager is hereby authorized and directed to make offsetting allocations of Company income, gain, loss or deduction under this Section 4.4 in whatever manner the Manager determines is appropriate so that, after such offsetting special allocations

are made, the Capital Accounts of the Members are, to the extent possible, equal to the Capital Accounts each would have if the provisions of Section 4.3 were not contained in this Agreement and all income, gain, loss and deduction of the Company were instead allocated pursuant to Section 4.1 and Section 4.2.

Section 4.5. Special Allocations in the Event of Company Audit Adjustments

Notwithstanding the allocation provisions of Section 4.1 and Section 4.2, and prior to making any of the allocations specified in Section 4.3, the following special allocations shall be made in the following order and in a manner, taking into consideration any tiered partnership structure that the Company may be part of, that reflects the relative economic interests of each Member in the Company:

(a) If for any fiscal year of the Company, the Company or any Affiliate of the Company is deemed to have additional income for tax purposes as a result of a re-determination by a taxing authority of an item of income, gain, loss or deduction that is attributable to a loan transaction, the provision of services, or the grant of a license or sublicense in intangible property by the Company or any Affiliate of the Company, to or involving any Member or Affiliate of any Member, such additional income shall be allocated to the Member involved in such loan transaction or that received such services, license or sublicense (or the Member whose Affiliate was involved in such loan transaction or received such services, license or sublicense) and any related deemed cash distribution shall be treated as having been made to the same Member.

(b) If for any fiscal year of the Company, the Company or any Affiliate of the Company is deemed to have a reduction in income for tax purposes as a result of a re-determination by a taxing authority of an item of income, gain, loss or deduction that is attributable to a loan transaction, the provision of services, or the grant of a license or sublicense in intangible property by the Company or any Affiliate of the Company, to or involving any Member or Affiliate of any Member, such reduction in income shall be allocated to the Member involved in such loan transaction or that received such services, license or sublicense (or the Member whose Affiliate was involved in such loan transaction or received such services, license or sublicense) and any related deemed cash contribution shall be treated as having been made by the same Member.

(c) If for any taxable period of a Member, such Member or any Affiliate of the Member is deemed to have additional income for tax purposes as a result of a re-determination by a taxing authority of an item of income, gain, loss or deduction attributable to a loan transaction, the provision of services, or the grant of a license or sublicense in intangible property by such Member or any Affiliate of such Member, to or involving the Company or any Affiliate of the Company, any increase in the amount of a Company deduction associated with such re-determination of such Member's or any Affiliate of such Member's income shall be allocated (in the appropriate fiscal year) to the Member involved in such loan transaction or that provided such services, license or sublicense (either directly or through an Affiliate), and any related deemed cash contribution shall be treated as having been made by the same Member.

(d) If for any taxable period of a Member, such Member or any Affiliate of the Member is deemed to have a reduction in income for tax purposes as a result of a re-determination by a taxing authority of an item of income, gain, loss or deduction attributable to a loan transaction, the provision of services, or the grant of a license or sublicense in intangible property by such Member or any Affiliate of such Member, to or involving the Company or any Affiliate of the Company, any reduction in the amount of a Company deduction associated with such re-determination of such Member's or any Affiliate of such Member's income shall be allocated (in the appropriate fiscal year) to the Member involved in such loan transaction or that provided such services, license or sublicense (either directly or through an Affiliate), and any related deemed cash distribution shall be treated as having been made to the same Member.

(e) A re-determination by a taxing authority shall only be given effect for purposes of this Section 4.5 if such re-determination is (i) a decision, judgment, decree or other order by any court of competent jurisdiction, which has become final and is either no longer subject to appeal or for which a determination not to appeal has been made; (ii) a closing agreement made under Section 7121 of the Code or any comparable foreign, state, local or other income tax statute; (iii) a final disposition by a taxing authority of a claim for refund; or (iv) any other written agreement made with respect to a tax re-determination the execution of which is final and prohibits the taxing authority, relevant Member (or any Affiliate of such Members) or the Company (or any Affiliate of the Company) from seeking any further legal or administrative remedies with respect to such tax re-determination.

Section 4.6. Allocation of Credits

All tax credits shall be allocated among the Members in accordance with their respective allocations of Profits and Losses in accordance with this Agreement or in accordance with applicable provisions of the Code or Treasury Regulations to the extent any such provision is inconsistent with such allocation.

Section 4.7. Tax Allocations

(a) Contributed Property

If any property is contributed to the capital of the Company, income, gain, loss and deduction with respect to such property shall be allocated solely for tax purposes among the Members in accordance with Section 704(c) of the Code and Treasury Regulations Section 1.704-3 so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Book Value. All decisions regarding the choice of allocation method under Treasury Regulations Section 1.704-3 with respect to assets contributed to the Company shall be made by the Manager, subject to the prior written consent of Class B Members holding a majority of the total outstanding ~~Percentage Interests~~Class B Percentages, not to be unreasonably withheld, conditioned or delayed.

(b) Revalued Property

If the Company assets are revalued as set forth in the definition of "Book Value" in ~~Section 1.1~~Section 1.1, then subsequent allocations of income, gain, loss and deduction with

respect to revalued Company assets shall take into account any variation between the adjusted basis of such assets for federal income tax purposes and their adjusted value in the same manner as under Section 704(c) of the Code and in compliance with Treasury Regulations Section 1.704-3. ~~All~~Except as otherwise provided herein, all decisions regarding the choice of allocation method under Treasury Regulations Section 1.704-3 with respect to revalued Company assets shall be made by the Members. The Company shall use the “traditional method” without curative allocations under Treasury Regulations Section 1.704-3(b) for reverse Section 704(c) allocations resulting from the revaluation of the Company’s assets for Book Value purposes in connection with initial issuance of Class A Preferred Interests.

(c) Allocations with Respect to Certain Securities

If the Company sells, exchanges or otherwise disposes of any investment security at a loss, to the extent such loss is specifically reimbursed by one or more Members, such reimbursed loss shall be allocated solely for income tax purposes among the Members in accordance with their respective reimbursements to the Company.

Section 4.8. Change in Members' Interests

In the event there is any change in the Members' respective ~~Percentage Interests~~Class A Percentages and/or Class B Percentages during any fiscal year, Profits, Losses, Nonrecourse Deductions and other items shall be allocated among the Members in accordance with their respective ~~Percentage Interests~~Class A Percentages and/or Class B Percentages, as the case may be, from time to time during such fiscal year based on an interim closing of the books as of the close of business on the date of such change.

ARTICLE 5
ACCOUNTING AND RECORDS

Section 5.1. Fiscal Year

The fiscal year of the Company shall be the year ending December 31.

Section 5.2. Method of Accounting

Unless otherwise provided herein, the Company books of account shall be maintained in accordance with GAAP; provided that for purposes of making allocations with respect to items of Company income, gain, deduction, loss and credit to the Members, such items shall be allocated to the Members' Capital Accounts pursuant to ARTICLE 4 and as required by Section 704 of the Code and the Treasury Regulations promulgated thereunder.

Section 5.3. Books and Records; Inspection

Proper and complete records and books of accounts of the Company business for tax and financial purposes, including all such transactions and other matters as are usually entered into records and books of account maintained by Persons engaged in businesses of like character or as are required by Applicable Law, shall be kept by the Company at the Company's principal office and place of business. The Manager may delegate to a third party the duty to maintain and

oversee the preparation and maintenance of such records and books of account. Books and records maintained for financial purposes shall be maintained in accordance with GAAP, and books and records maintained for tax purposes shall be maintained in accordance with the Code and applicable Treasury Regulations. Subject to Section 10.2, all records and documents described in Section 5.3 shall be open to inspection and copying by any of the Members or their representatives or agents at any reasonable time during normal business hours.

Section 5.4. Financial Statements; Internal Controls

(a) Within ninety (90) days after the end of each fiscal year, and thirty (30) days after the end of each fiscal quarter (other than the fourth fiscal quarter), the Manager shall cause to be furnished to each Member financial statements with respect to such fiscal year or fiscal quarter of the Company, consisting of (i) a consolidated balance sheet showing the Company's financial position as of the end of such fiscal year or fiscal quarter; (ii) supporting consolidated profit and loss statements; (iii) a consolidated statement of cash flows for such fiscal year or fiscal quarter; and (iv) Member's Capital Accounts. Such financial statements shall be prepared on a consolidated basis for the Company and its Subsidiaries in accordance with GAAP and SEC Regulation S-X except, with respect to the quarterly financial statements which need not be separately audited, for the omission of certain footnotes and other presentation items required by GAAP with respect to audited financial statements. The annual financial statements of the Company, except for the annual financial statements of the Company for the fiscal year ended December 31, 2014, shall be audited (which audit shall be conducted in accordance with GAAP and SEC Regulation S-X) and certified by the Company's independent accountants. Each Member shall receive a copy of all material financial reports and notices delivered by the Company to any third party pursuant to any other agreement.

(b) At all times during the continuance of the Company, the Company and each of its Subsidiaries shall maintain, or cause to be maintained on their behalf, a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. From time to time, upon specific written notice thereof, the Company and its Subsidiaries shall promptly remedy any significant deficiencies or material weaknesses in their internal accounting controls.

(c) At all times during the continuance of the Company, the Company shall furnish, or cause to be furnished on its behalf, to each Member that files public reports with the SEC, upon written request by such Member to the Manager, such financial statements and financial and other information regarding the Company and its Subsidiaries as may be necessary or reasonably required for such Member and its Affiliates to prepare their financial statements and related information in accordance with GAAP and applicable SEC rules and regulations, including without limitation, Regulations S-X and S-K promulgated by the SEC, and to have such information reviewed or audited from time to time, as applicable, by such Member's or ~~their~~^{its} Affiliates' independent auditors (at such Member's sole cost and expense and subject to all

applicable confidentiality obligations). All such financial statements and financial and other information shall be furnished in such manner and at such times as may be necessary or reasonably required for such Member or its Affiliates to timely prepare and file any registration statements that they may file under the Securities Act and to timely prepare and file any and all current and periodic reports and proxy statements that they may file under the Exchange Act, in each case in accordance with GAAP and applicable SEC rules and regulations, including, without limitation, Regulations S-X and S-K promulgated by the SEC. The Company and its officers shall execute and deliver such certificates, affidavits, representation letters and similar documents as such Member or its Affiliates or their respective independent auditors may reasonably request in connection therewith.

(d) At all times during the continuance of the Company, the Company and its Subsidiaries shall design, implement and maintain, or cause to be designed, implemented and maintained on their behalf, proper “internal control over financial reporting” (as defined in Rule 13a-15(f) promulgated under the Exchange Act). The Company and its Subsidiaries shall prepare and maintain, or cause to be prepared and maintained, adequate documentation of their internal control over financial reporting consistent with the requirements of the Public Company Accounting Oversight Board, Rule 13a-15 promulgated under the Exchange Act and Item 308 of Regulation S-K promulgated by the SEC, and shall make such documentation available to any such Member and its Affiliates and their independent auditors at such reasonable times as such Persons may reasonably request. Such internal control over financial reporting (and the documentation related thereto) shall be sufficient to permit each Member that files public reports with the SEC to assess and evaluate periodically the effectiveness of the internal control over financial reporting of the Company and its Subsidiaries and to permit each independent auditor of each such Member to evaluate such assessment and to provide any required attestation report with respect thereto. From time to time, upon notice of any such condition, the Company and its Subsidiaries shall promptly remedy any significant deficiencies or material weaknesses in their internal control over financial reporting.

Section 5.5. Taxation

(a) Status of the Company. The Members acknowledge that this Agreement creates a partnership for federal income tax purposes. Furthermore, the Members hereby agree not to elect to be excluded from the application of Subchapter K of Chapter 1 of Subtitle A of the Code or any similar state statute.

(b) Tax Elections and Reporting

(i) Generally. The Company shall make the following elections and take the following positions under United States income tax laws and Treasury Regulations and any similar state laws and regulations:

(A) adopt the year ending December 31 as the annual accounting period (unless otherwise required by the Code and Treasury Regulations);

(B) adopt the accrual method of accounting;

(C) insofar as permissible, report the Company's tax attributes and results using principles consistent with those assumed in connection with entering into this Agreement; and

(D) have the Company treated as a partnership for federal income tax purposes in a manner consistent with Treasury Regulations ~~Section~~[Sections 301.7701-7701-2 and -3](#).

(ii) Code Section 754 Election. The Manager shall, upon the written request of any Member, cause the Company to file an election under Section 754 of the Code and the Treasury Regulations promulgated thereunder to adjust the basis of the Company's assets under Section 734(b) or 743(b) of the Code and a corresponding election under the applicable sections of state and local law.

(c) Company Tax Returns

(i) The Tax Matters Member will prepare or cause to be prepared all required domestic and foreign tax returns and information returns of the Company, drafts of which shall be furnished to the Members within ninety (90) days following the close of each fiscal year. Final returns shall be filed within one hundred eighty (180) days following each year end. The Company shall pay for all reasonable out-of-pocket expenses (including accounting fees, if any) in connection with such preparation (it being understood that the Tax Matters Member shall not receive any compensation from the Company for preparing such returns). Any Member may, at its own expense, engage a third party to review the tax returns and information returns prepared by the Tax Matters Member pursuant to the preceding sentence. The Tax Matters Member shall not file any such return without the approval of any Member that constitutes a “notice partner” (as defined in Section 6231(a)(8) of the Code) (as in effect for tax years beginning prior to January 1, 2018 and determined without regard to whether any informational or procedural steps associated with obtaining such status have been complied with) of the Company, which approval shall not be unreasonably withheld, conditioned or delayed. Such “notice partner” Member shall be deemed to have given such approval if such Member does not indicate its written objection (which may be delivered by facsimile) to the Tax Matters Member within twenty (20) days of the date that such Member receives a draft of such return. If a “notice partner” Member does not approve of any proposed filing of a return by the Tax Matters Member, such Member and the Tax Matters Member shall seek, in good faith, to resolve their disagreement. If a “notice partner” Member and the Tax Matters Member cannot resolve their disagreement within ten (10) days of receipt of the “notice partner” Member's written objection by the Tax Matters Member, either of such Member or the Tax Matters Member may request, in writing with a copy sent to the other Member, that the disagreement be resolved by the Company's independent public accountants and the independent public accountants shall be instructed to resolve the dispute in such manner consistent with this Agreement as they believe will properly maximize, in the aggregate, the United States federal, state and local income tax advantages and will properly minimize, in the aggregate, the United States federal, state, and local income tax detriments, available to the Company's Members. The independent public accountants shall provide their written resolution of the

disagreement to both the “notice partner” Member and the Tax Matters Member within fifteen (15) days from the date that the independent public accountants were requested to resolve such disagreement. Any and all other tax returns shall be prepared in a manner directed by the Tax Matters Member consistent with the terms of this Agreement. Each Member shall provide such information, if any, as may be reasonably requested by the Company for purposes of preparing such tax and information returns.

(ii) The Tax Matters Member shall furnish a copy of all filed domestic and foreign tax returns and information returns for the Company to each of the Members. In addition, upon reasonable written notice provided to the Company by a Member (and as otherwise required by Applicable Law), the Company shall furnish such Member, on a timely basis, with all information relating to the Company required to be reported in any United States federal, state or local tax return of such Member, including a report indicating such Member's allocable share for United States federal income tax purposes of the Company's income, gain, credits, losses and deductions.

(iii) The Members agree that the Company shall be treated as a partnership for United States federal income tax purposes. The Members agree to (A) approve electing partnership status with respect to the Company with the United States Internal Revenue Service and such other state and local taxing authorities as may be appropriate and to cooperate in providing all consents, signatures, documents and such other information as may be required with respect thereto and (B) report all “partnership items” (as defined in Section 6231(a)(3) of the Code) [\(as in effect for tax years beginning prior to January 1, 2018\)](#) of the Company consistent with such classification of the Company for United States federal, state and local tax purposes and with the returns filed by the Company; provided, however, that if any Member intends to file a notice of inconsistent treatment under Section 6222(b) of the Code, such Member shall, at least thirty (30) days prior to the filing of such notice, notify in writing the other Members of such intent and such Member's intended treatment of the item which is (or may be) inconsistent with the treatment of that item by the Company.

(d) Tax Audits. American II, for so long as it is a Member and, thereafter, the Manager shall be the “tax matters partner” of the Company, as that term is defined in Section 6231(a)(7) of the Code [\(as in effect for tax years beginning prior to January 1, 2018\)](#) (the “Tax Matters Member”), with all of the rights, duties and powers provided for in sections 6221 through 6232, inclusive, of the Code [\(as in effect for tax years prior to January 1, 2018\)](#), provided that the Tax Matters Member shall not pay or agree to pay (or make any agreement that would cause a Member to pay) any audit assessment, or any amount in settlement or compromise of any litigation, in respect of income tax liability of the Members attributable to the Interests in the Company, in excess of \$500,000 in any one instance or series of related instances, unless approved by each Member whose financial interest in such matter exceeds \$100,000 individually or in the aggregate. The Tax Matters Member, as an authorized representative of the Company, shall direct the defense of any tax claims made by the Internal Revenue Service or any other taxing jurisdiction to the extent that such claims relate to adjustment of Company items at the Company level and, in connection therewith, shall retain and cause the Company to pay the fees and expenses of counsel and other advisors chosen by the Tax Matters Member. The Tax Matters Member shall also be responsible for timely filing all elections made by the Company,

subject to any applicable approval requirements set forth in this Agreement. The Tax Matters Member shall deliver to each Member and the Manager a semi-annual report on the status of all tax audits and open tax years relating to the Company, and shall consult with and keep all Members and the Manager advised of all significant developments in such matters coming to the attention of the Tax Matters Member. All reasonable out-of-pocket expenses of the Tax Matters Member and its Affiliates and other reasonable fees and expenses in connection with such defense shall be borne by the Company (it being understood that the Tax Matters Member shall not receive any compensation from the Company for acting in such capacity). Except as provided in ARTICLE 12, neither the Tax Matters Member nor the Company shall be liable for any additional tax, interest or penalties payable by a Member or any costs of separate counsel chosen by such Member to represent the Member with respect to any aspect of such defense. The Tax Matters Member shall take any steps necessary ~~pursuant to Section 6223(a)~~ to designate American II and NSM as a “notice partner” (as defined in Section 6231(a)(8) of the Code) (as in effect for tax years beginning prior to January 1, 2018). In addition, nothing in this Agreement is intended to waive any rights, including rights to participate in administrative and judicial proceedings, that a Member may have under Section 6221 through 6233 of the Code (as in effect for tax years beginning prior to January 1, 2018). Notwithstanding any other provisions of this Agreement, the provisions of Section 5.5(c) and Section 5.5(d) shall survive the dissolution of the Company or the termination of any Member's interest in the Company and shall remain binding on all Members for a period of time necessary to resolve with the United States Internal Revenue Service or any applicable state or local taxing authority all matters (including litigation) regarding the United States Federal, state and local income taxation, as the case may be, of the Company or any Member with respect to the Company.

(e) Withholding

(i) The Company shall comply with all withholding requirements under applicable United States federal, state, local and foreign tax laws and shall remit amounts withheld to, and file required forms with, the applicable taxing authorities. To the extent that the Company withholds and pays over any amounts to any taxing authority with respect to distributions or allocations to any Member, the amount withheld shall be charged to the Capital Account of such Member. The Company shall notify each of the Members of any withholding with respect to such Member, designating such Member's allocable share of such withholding tax. The Members hereby agree that they will not claim a credit in excess of the amount in such notice.

(ii) In the event of any claimed over-withholding by the Company, the Member shall have no rights against the Company or any other Member. Anything in the previous sentence to the contrary notwithstanding, if the Company is required to take any action in order to secure a refund or credit for the benefit of a Member in respect of any amount withheld by it, it shall take any such action including applying for such refund on behalf of the Member and paying it over to such Member.

(iii) Except in the case of withholding pursuant to Section 1446 of the Code, if any amount required to be withheld was not withheld from actual distributions that would have otherwise been made to a Member, the Company shall require the Member to which the withholding was credited to reimburse the Company for such withholding; ~~provided~~

~~that in the case of withholding pursuant to Section 1446 of the Code, no such reimbursement shall be necessary as long as the other Members are subject to withholding in amounts proportionate to their Percentage Interests or otherwise receive a distribution of an equivalent amount.~~

(iv) In the event of any under-withholding by the Company, each Member agrees to indemnify and hold harmless the Company and the Tax Matters Member from and against any liability, including interest and penalties, with respect thereto.

(v) Each Member agrees to furnish the Company with any representations and forms as shall reasonably be requested by the Company to assist the Company in determining the extent of, and in fulfilling, the Company's withholding obligations.

(vi) Upon the request of any Member, the Company shall make any filings, applications or elections to obtain any available exemption from, or any available refund of, any withholding or similar taxes imposed by any non-United States (whether sovereign or local) taxing authority with respect to amounts distributable or items of income allocable to such Member hereunder. Such Member shall cooperate with the Company in making any such filings, applications or elections to the extent the Company reasonably determines that such cooperation is necessary or desirable. Notwithstanding the foregoing, if such Member must make any such filings, applications or elections directly, the Company, at the request of such Member, shall provide such information and take such other action as may reasonably be necessary to complete or make such filings, applications or elections.

ARTICLE 6 MANAGEMENT

Section 6.1. Manager

The Manager at all times shall exercise control over the Company in compliance with FCC Rules. The Manager shall, subject to the terms of this Agreement, have the exclusive right and power to manage, operate and control the Company and to make all decisions necessary or appropriate to carry on the business and affairs of the Company, including the authority to appoint, promote, demote and terminate executives who oversee the day-to-day activities of the Company and to select the financial institutions from which the Company may borrow money. In addition to the specific rights and powers herein granted to the Manager, the Manager shall possess and enjoy and may exercise all the rights and powers of a manager within the meaning of Section 18-101(10) of the Act, including the full and exclusive power and authority to act for and to bind the Company, but subject to the limitations of this Agreement. In addition to any other rights and powers that the Manager may possess, the Manager shall have all specific rights and powers required or appropriate for the day-to-day management of the Company's business, which shall be managed by experienced professionals in accordance with the standards of first-rate operators of wireless communications companies. Except as determined by the Manager pursuant to this Agreement, no Member or representative shall have any right or authority to take any action on behalf of the Company with respect to third parties or to bind the Company. For the avoidance of doubt, the Manager shall have the sole right to select the

wireless technologies and standards used in, and to determine the nature and type of services offered by, the License Company Systems, the terms upon which the License Company Systems' services are offered, and the prices charged for its services.

Section 6.2. Removal of Manager

(a) Removal of Manager

Subject to FCC approval, if required, NSM shall be removed as the Manager, and the management of the Company shall be transferred to a successor Manager in accordance with Section 6.2(b) and Section 6.2(c) if NSM (i) ~~if (A) NSM~~ is unwilling or unable to serve as the Manager, ~~(Bii)~~ would not be considered a Qualified Person if NSM itself were the applicant or licensee, as the case may be, in respect of the licenses held by the License Company or its Subsidiaries at any time prior to the fifth anniversary of the ~~last~~ Initial Grant Date and such failure is reasonably likely to materially impair the ability of the License Company or any of its Subsidiaries to realize the Auction Benefits or result in the revocation or non-renewal of any license, or ~~(Eiii)~~ commits a Significant Breach at any time ~~or (ii) in accordance with Section 11.4(a).~~

(b) Successor Manager

If NSM is removed as the Manager pursuant to Section 6.2(a), the management of the Company shall be transferred to a successor Manager, which shall (i) be, if then required in order for the License Company and its Subsidiaries to retain the Auction Benefits, a Qualified Person, provided that NSM shall in no way be liable to the Company or to any other Member for the failure of any successor Manager to be a Qualified Person, and (ii) be subject to the prior approval of American II. NSM (or, if it fails to do so, the other Members by affirmative vote of a majority of ~~Percentage Interests~~ Class B Percentages not held by NSM) shall designate the successor Manager as soon as reasonably practicable, but in any event no later than thirty (30) days after notice from any other Member that one or more of the events specified in Section 6.2(a) has occurred. NSM shall continue to act as Manager until the successor Manager assumes the management of the Company. NSM shall take whatever steps are commercially reasonable to assist the successor Manager in assuming the management of the Company, including transferring to the successor Manager all historical financial, tax, accounting and other data and records in the possession of NSM, and giving such consents, assigning such permits and executing such instruments as may be necessary to vest in the successor Manager those rights that were necessary for NSM to perform its obligations.

(c) Dispute Resolution

Any dispute over the removal of NSM as the Manager pursuant to Section 6.2(a) shall be resolved by arbitration in accordance with Section 10.3; provided that (i) the arbitrators shall be instructed to render their decision within thirty (30) days after the commencement of any such proceeding and (ii) the losing Member shall pay the reasonable and documented out-of-pocket fees, costs and expenses of the prevailing Member in connection with the proceeding.

Section 6.3. Supermajority Approval Rights

All Significant Matters shall require the prior written approval of American II, in its sole and absolute discretion for any reason or no reason; provided that no such approval shall be required solely with respect to the purchase and sale of Interests pursuant to and in accordance with the terms of the Interest Purchase Agreement or pursuant to the Put Right; provided, further, that transfers of assets of the License Company (other than the membership interests of any Subsidiaries that do not hold licenses) or of any of its Subsidiaries solely for the purpose of generating the funds required to satisfy the obligations of the License Company and its Subsidiaries that are then due and payable under the Interest Purchase Agreement shall cease to require the approval of American II under any clause of the definition of Significant Matter at such time, subject to the provisions of the Senior Credit Facility and the Intercreditor and Subordination Agreement.

Section 6.4. Separateness Covenants

(a) NSM shall cause the Company and each of its Subsidiaries to, and the Company shall and shall cause each of its Subsidiaries to, (i) to the extent that such entities have one or more deposit accounts, each maintain ~~their~~its own deposit account or accounts, separate from the accounts of American II and its Subsidiaries and joint ventures, with commercial banking institutions, and (ii) not commingle their funds with those of American II or any of its Subsidiaries or joint ventures;

(b) NSM shall cause the Company and each of its Subsidiaries to, and the Company shall and shall cause each of its Subsidiaries to, maintain separate addresses from the addresses of American II and its Subsidiaries and joint ventures, or to the extent the Company or any of its Subsidiaries may have offices in the same location as American II or any of its Subsidiaries or joint ventures, to maintain a fair and appropriate allocation of overhead costs among them, with each such entity bearing its fair share of such expense;

(c) NSM shall cause the Company and each of its Subsidiaries to issue, and the Company and each of its Subsidiaries shall issue, quarterly and annual consolidated financial statements from time to time as required by Section 5.4(a);

(d) NSM shall cause the Company and each of its Subsidiaries to, and the Company shall and shall cause each of its Subsidiaries to, (i) each maintain its separate status as a limited liability company and (ii) each conduct its affairs in accordance with its certificate of formation and limited liability company agreement and observe all necessary, appropriate and customary company formalities, including, but not limited to, holding all regular and special members' and managers' meetings appropriate to authorize company action, keeping separate and accurate minutes of its meetings, passing all resolutions or consents necessary to authorize actions taken or to be taken, and maintaining accurate and separate books, records and accounts, including, but not limited to, payroll and intercompany transaction accounts, to the extent applicable;

(e) NSM shall not permit the Company or any of its Subsidiaries to, and the Company shall not and shall not permit any of its Subsidiaries to, (i) assume or guarantee any of the liabilities of, or pledge any of its assets as security for the liabilities of, American II or any of

its Subsidiaries or joint ventures, or (ii) hold out the credit of American II or any of its Subsidiaries or joint ventures as being able to satisfy the obligations of the Company or any of its Subsidiaries (which shall be deemed not to refer to any disclosure by the Company or any of its Subsidiaries of any capital contributions or loans that American II or any of its Subsidiaries is required to make to the Company or any of its Subsidiaries or of any other obligations that American II or any of its Subsidiaries is required to perform for the benefit of the Company or any of its Subsidiaries), except with respect to any guarantees or assumptions of indebtedness or other liabilities that have been expressly agreed to by American II or any of its Subsidiaries in writing;

(f) NSM shall cause the Company and each of its Subsidiaries not to, and the Company shall not and shall cause each of its Subsidiaries not to, authorize the use of its name or trademarks or service marks by American II or any of its Subsidiaries or joint ventures, except pursuant to a written license agreement;

(g) NSM shall not permit the Company or any of its Subsidiaries to, and the Company shall not and shall not permit any of its Subsidiaries to, ~~except as permitted under the Trademark License Agreement,~~ conduct its own business with suppliers of goods and services, lenders or purchasers of securities in the name of American II or any of its Subsidiaries or joint ventures. NSM further acknowledges that it shall have no right to conduct any business in the name of American II or on behalf of American II unless specifically authorized herein; and

(h) If NSM or the Company or any of its Subsidiaries obtains actual knowledge that American II or any of its Subsidiaries or joint ventures has represented or indicated to any supplier of goods and services to, lender to or purchaser of securities of the Company or any of its Subsidiaries that the credit of American II or any of its Subsidiaries or joint ventures is available to satisfy the obligations of the Company or any of its Subsidiaries (which shall be deemed not to refer to any disclosure by American II or any of its Subsidiaries or joint ventures of any capital contributions or loans that American II or any of its Subsidiaries is required to make to the Company or any of its Subsidiaries or of any other obligations that American II or any of its Subsidiaries is required to perform for the benefit of the Company or any of its Subsidiaries), other than with respect to any guarantees or assumptions of indebtedness or other liabilities that have been expressly agreed to by American II or any of its Subsidiaries in writing, then NSM shall cause the Company and each of its Subsidiaries to, and the Company shall and shall cause each of its Subsidiaries to, provide written notice to any person to whom such representation or indication was made to make clear that the credit of American II and its Subsidiaries and joint ventures is not available to satisfy the obligations of the Company or any of its Subsidiaries other than with respect to any guarantees or assumptions of indebtedness or other liabilities that have been expressly agreed to by American II or any of its Subsidiaries in writing.

Section 6.5. Business Plans and Budgets

(a) Five-Year Business Plan

On September 12, 2014, the Manager adopted the initial five-year high-level business plan (the “Five-Year Business Plan”) of the Company and its Subsidiaries. The Manager shall;

~~after consultation with American II,~~ update the Five-Year Business Plan to address the next five-year period; which update ~~shall be as consistent as practicable with the prior Five-Year Business Plan, and~~ shall be distributed to American II not later than thirty (30) days prior to the end of the fifth fiscal year covered by the Five-Year Business Plan. In addition, the Manager may, from time to time, in the exercise of its reasonable discretion, modify the Five-Year Business Plan; ~~after consultation with American II,~~ to reflect any material changes affecting the Company and its Subsidiaries or their Business, including changes in availability of capital (including under the Senior Credit Facility).

(b) Annual Business Plans and Budgets

The Manager shall, ~~after consultation with American II,~~ prepare and adopt a detailed annual Business Plan and detailed annual budget no later than ninety (90) days following the ~~first~~ Initial Grant Date. ~~Drafts of each annual Business Plan and budget after the initial annual Business Plan and budget will be distributed to American II for its review and comment no later than forty-five (45) days after the end of the immediately preceding fiscal year of the Company.~~ Each such annual Business Plan shall set forth the business and operational parameters and objectives for such year, including appropriate explanations of the Manager's ~~proposed~~ strategy. Each such budget shall include, without limitation, a detailed breakdown of the following, together with the details of the material assumptions used, for the Company and its Subsidiaries: (i) monthly revenue, operating expenses and interest expenses; (ii) quarterly capital expenditures and cash flow; (iii) balance sheet and income statement; and (iv) expected funding requirements and the ~~proposed~~ methods of meeting such requirements. ~~Following the initial annual Business Plan and annual budget, each annual Business Plan and annual budget shall be consistent with the Five-Year Business Plan as in effect at such time. The Manager shall, after consultation with American II, update the annual Business Plan and budget within thirty (30) days following the first Initial Grant Date.~~ In addition, the Manager may, from time to time, in the exercise of its reasonable discretion, modify the annual Business Plan and budget, ~~after consultation with American II,~~ to reflect any modification made to the Five-Year Business Plan in accordance with Section 6.5(a).

(c) No Other Business Plans or Budgets

No Business Plans or budgets shall be adopted except in accordance with the provisions of this Section 6.5. All such Business Plans and budgets shall be adopted or modified in accordance with the provisions of this Section 6.5 by the Manager in its sole and unilateral judgment. The Manager shall promptly deliver to American II each annual Business Plan and budget which the Manager may hereafter adopt (including any amendments thereto).

Section 6.6. Management Fees

~~If the License Company acquires one or more licenses in the Auction (and American II has not been relieved of its obligation to make its capital contribution pursuant to the last sentence of Section 2.2(c)(ii)), for~~ For so long as NSM continues to serve as the Manager, the Company shall cause the License Company to pay a management fee to NSM, by wire transfer of immediately available funds equal to \$700,000 per year (the “Management Fee”), payable in quarterly installments in arrears. For the avoidance of doubt, the Management Fee is meant

solely as a payment to the Manager in lieu of a board of managers fee which would typically be payable to a managing member of a board in connection with its oversight and control of the Company, and is not meant to cover the operating, overhead or employee compensation expenses of the Company and its Subsidiaries, all of which will be payable directly by the Company and its Subsidiaries (and not by the Manager itself).

ARTICLE 7
TRANSFER RESTRICTIONS

No Member may Transfer all or any part of its Interests, including interests in any of its Subsidiaries that directly or indirectly own Interests, except in compliance with the following provisions of this ARTICLE 7.

Section 7.1. Restrictions

(a) Transfers by Certain Members

The Members (other than American II) may Transfer Interests (i) at any time after the ~~last~~ Initial Grant Date, to one or more Permitted Transferees; (ii) during the ~~ten~~five (~~10~~5) years after the ~~last~~ Initial Grant Date with the consent of American II, which may be withheld in its sole and absolute discretion; (iii) to the License Company pursuant to the Interest Purchase Agreement or to the Company pursuant to ARTICLE 8 without the consent of American II but subject to Section 7.1(d); and (iv) following the ~~tenth~~fifth anniversary of the ~~last~~ Initial Grant Date without the consent of American II, but in each case subject to Section 7.3 and the other provisions of this ARTICLE 7. American II may not Transfer all or a majority of its Interests unless the transferee thereof either (x) agrees to assume in a written agreement reasonably acceptable to NSM (such consent not to be unreasonably withheld, conditioned or delayed) American II's obligations under the Senior Credit Facility, the Intercreditor and Subordination Agreement and all related agreements and agrees to be bound by the provisions thereof as if an original party thereto or (y) agrees to provide at least the same level of financing to the Company, the License Company and its Subsidiaries as available to them under the Senior Credit Facility on terms and conditions which are acceptable to NSM; provided that if the terms and conditions, individually and in the aggregate, are, in the reasonable judgment of NSM, no less favorable to NSM, the Company, the License Company and its Subsidiaries as those set forth in the Senior Credit Facility, the Intercreditor and Subordination Agreement and such related agreements (including the priority of Liens set forth therein), then NSM shall not unreasonably withhold, condition or delay such consent. Notwithstanding the foregoing, at any time after the close of the Auction, the Manager may admit as new, non-controlling members of the Manager, one or more Persons to provide additional capital to the Manager, subject to American II's consent, which shall not be unreasonably withheld, conditioned or delayed, and provided that such action does not result in NSM failing to qualify as a "very small business" as required by Section 11.3(a)(iii).

(b) No Transfer of Right to Manage

The right to manage the Company pursuant to this Agreement shall not be transferable with the Interests of NSM without the prior written consent of American II. Accordingly, subject to Section 7.1(a), if NSM Transfers twenty-five percent (25%) or more of its Interests

(other than a Transfer of one hundred percent of NSM's Interests to a Permitted Transferee), ~~and American II elects not to exercise its right of first refusal pursuant to Section 7.3(a),~~ then, subject to FCC approval, the right to manage the Company shall be transferred to a successor Manager, which shall (i) be, if then required in order for the License Company and its Subsidiaries to retain the Auction Benefits, a Qualified Person; (ii) not be a competitor or an Affiliate of a competitor of American II (as determined by American II in its sole and absolute discretion ~~for any reason or no reason~~) or its Affiliates and (iii) be subject to the prior written approval of American II.

(c) No Transfers to Competitors

So long as American II owns an Interest, the Members other than American II may not Transfer any or all of their Interests to a competitor of American II or its Affiliates, or an Affiliate of any such competitor, without American II's prior written consent, which may be withheld in its sole and absolute discretion.

(d) FCC Compliance

All Transfers of Interests are subject to and must comply with all applicable FCC Rules.

Section 7.2. Exceptions

(a) Transfers by Members of NSM

The provisions of Section 7.1 (other than Section 7.1(d)) shall not apply to (i) the Cash Equity Investors, except with respect to Transfers of their interests in NSM, whether held directly by the Cash Equity Investors or through one or more intermediaries (it being understood that this exception is intended to restrict Transfers of interests in NSM effected by the Cash Equity Investors themselves and their Subsidiaries, rather than Transfers effected by direct and indirect owners of interests in the Cash Equity Investors) and (ii) Transfers (except with respect to Transfers of their interests in NSM) or issuances of the Equity Interests of any other member of NSM, unless such Transfer results in a Change of Control of NSM or would impair the ability of the License Company or any of its Subsidiaries to realize the Auction Benefits.

(b) Transfers by American II Members

Notwithstanding anything herein to the contrary, but subject to the provisions of Section 14.3, the restrictions set forth in Section 7.1 (other than Section 7.1(d)) shall not apply to (i) Transfers of Interests in the Company held by American II (or its Permitted Transferees) to any Affiliate of American II or (ii) Transfers of direct or indirect interests in American II or its Affiliates. In addition, American II (or its Permitted Transferees) may collaterally assign its Interests in the Company to any secured lender of American II or its Affiliates, and American II (or its Permitted Transferees) may Transfer its Interests in the Company held by American II (or its Permitted Transferees) at any time in accordance with Section 14.3.

(c) Pledges by Certain Members

The members of NSM may pledge their Equity Interests in NSM to secure loans, provided that any such pledge and its terms (A) shall be subject to the prior approval of

American II (which shall not be unreasonably withheld or delayed), but solely with respect to compliance of any such pledge and its terms with FCC Rules, including with respect to the matters set forth in clause (B) below, and (B) shall in no event permit the lender to take any action that would impair the eligibility of the License Company or any of its Subsidiaries to hold any of the licenses won in the Auction or that could result in the License Company or any Subsidiary losing any Auction Benefits.

Section 7.3. Right of First Refusal

(a) Notice and Exercise of Right

~~If, following the expiration of the ten-year period referred to in Section 7.1(a), any Members other than American II (the “Sellers”) receive and wish to accept a bona fide written binding offer (the “Third Party Offer”) from a bona fide third party who is not a Permitted Transferee (the “Offeror”) to purchase all or any portion of their Interests (the “Offered Interests”), then the Sellers shall give notice of such Third Party Offer (the “Third Party Offer Notice”) to American II, which notice shall identify the Offeror, enclose a copy of the Third Party Offer and irrevocably offer to American II the right to purchase the Offered Interests at the same purchase price, which must be payable in cash, and on the other terms and conditions as specified in the Third Party Offer if the Offered Interests are the only assets being sold or for cash at the lesser of the designated purchase price for the Offered Interests in the Third Party Offer or at their then Fair Market Value if the Offered Interests are being Transferred in such transaction or series of related transactions with other assets or for consideration other than cash; provided that American II shall be entitled to pay for the Offered Interests with instruments of indebtedness to the extent the Third Party Offer contemplates the delivery of instruments of indebtedness. American II may exercise its right to purchase the Offered Interests by notifying the Sellers in writing of its election to purchase within thirty (30) days after the later of (i) delivery of the Third Party Offer Notice and (ii) any determination of Fair Market Value pursuant to Section 7.7 or otherwise.~~

(b) Closing of Purchase

~~If American II duly elects to purchase the Offered Interests, the closing of such purchase (the “RoFR Closing”) shall take place on a date agreed to by the Sellers and American II, but in no event later than thirty (30) days following the exercise by American II of its election to purchase; provided that if any governmental or regulatory approval is required for American II to consummate its purchase and has not been obtained by the date that is twenty five (25) days following the exercise by American II of its election to purchase, the RoFR Closing with respect to such purchase may be deferred until no later than ten (10) days following the date on which the governmental or regulatory approval, including an order, decision, or public notice of the FCC or a duly authorized bureau or division thereof granting such approval, is final and no longer subject to reconsideration, review or appeal, unless such finality is waived by American II, in which case the closing with respect to such purchase shall occur within ten (10) days following the later of (i) the date on which such governmental or regulatory approval, including a non-final order, decision, or public notice of the FCC or a duly authorized bureau or division thereof granting such approval, is released and (ii) the date of American II's waiver of such finality.~~

~~(c) Representations at Closing~~

~~At any RoFR Closing, the Sellers shall represent and warrant in writing to American II only that the Sellers (i) are the sole beneficial and record owners of the Offered Interests and have good title thereto free and clear of all Liens (other than restrictions imposed pursuant to this Agreement or under any applicable securities laws and other than Liens under or pursuant to the Senior Credit Facility and the other Loan Documents (as defined therein)) and (ii) have full power and authority to sell the Offered Interests without conflict with the terms of any Applicable Law, order or agreement or instrument binding upon them or their assets. The Sellers shall deliver to American II such customary instruments of assignment with respect to the Offered Interests as may be reasonably requested by American II to vest in American II all right, title and interest therein.~~

~~(d) Sale to Third Party~~

~~If American II fails to exercise its right to purchase the Offered Interests, the Sellers may accept the Third Party Offer and sell the Offered Interests to the Offeror; provided that such sale shall be at a price, and on other terms and conditions, no less favorable to Sellers than those specified in the Third Party Offer Notice and otherwise in accordance with this ARTICLE 7. If such sale is not consummated within ninety (90) days after the expiration of the applicable time periods specified in paragraph (a) above, subject to an automatic extension for up to an additional two hundred seventy (270) days to the extent necessary to obtain any required governmental or regulatory approval, such right to sell shall lapse and Transfers of the Offered Interests shall again be subject to the provisions of this Section 7.3.~~

Section 7.3. (e) Assumption of Agreements

At any closing with respect to a sale to a third party, the ~~Offeror~~proposed transferee shall execute a counterpart to this Agreement and any Related Agreements to which the Sellers or their Affiliates are party and shall be bound by the provisions of and assume the obligations of the Sellers under all such Agreements. The Sellers and the ~~Offeror~~proposed transferee shall execute such documents as American II may reasonably request to evidence such assumption. Notwithstanding the foregoing, the Sellers shall not be relieved of any of their obligations under this Agreement or any Related Agreement arising prior to such sale, to the extent such obligations shall not be discharged by the third party.

Section 7.4. Tag-Along Right

~~(a) In lieu of exercising its rights under Section 7.3, American II may, within thirty (30) days following receipt of any Third Party Offer Notice, elect to participate in such sale by including therein a *pro rata* portion of its Interests in the Company. Such sale, if any, shall be made on the same terms and conditions as the sale described in the Third Party Offer Notice and the Sellers may not consummate their sale unless such sale, if any, by American II is consummated simultaneously in accordance with the terms hereof. If American II fails to elect to participate in such sale and such sale is not consummated within the applicable time periods specified above in Section 7.3(d), the rights and restrictions provided for in this Section 7.4(a)~~

~~shall again become effective, and no Transfer of Interests may be made thereafter by the Sellers other than in accordance with this ARTICLE 7.~~

~~(b) If, following the expiration of the ten-year period referred to in Section 7.1(a), American II receives and wishes to accept a *bona fide* written binding offer from a *bona fide* third party who is not a Permitted Transferee to purchase all or any portion of its Interests in accordance with Section 14.3(b), then American II shall give notice of such offer to NSM, which notice shall identify the offeror and enclose a copy of such offer. NSM may, within thirty (30) days following receipt of such notice, elect to participate in such sale by including therein a *pro rata* portion of its Interests in the Company. Such sale, if any, shall be made on the same terms and conditions as the sale described in the notice given by American II pursuant to the first sentence hereof and American II may not consummate its sale unless such sale, if any, by NSM is consummated simultaneously in accordance with the terms hereof. If NSM fails to elect to participate in such sale and such sale is not consummated within one hundred twenty (120) days after the delivery by American II to NSM of the notice of such third party offer, subject to an automatic extension for up to an additional two hundred seventy (270) days to the extent necessary to obtain any required governmental or regulatory approval, the rights and restrictions provided for in this Section 7.4(b) shall again become effective, and no Transfer of Interests may be made thereafter by American II other than in accordance with this ARTICLE 7.~~

Section 7.4. ~~Section 7.5.~~ Substituted Members

Prior to any Transfer of Interests by a Member, the transferor shall deliver to other Members a notice setting forth the identity of the transferee, and shall provide such other information as the other Members may reasonably request in connection with such Transfer. A transferee of Interests Transferred in accordance with this ARTICLE 7 shall be admitted as a Member upon execution of a counterpart to this Agreement evidencing its agreement to be bound hereby. Upon the admission of any such transferee as a Member, the transferring Member or Members shall be relieved of any obligation arising under this Agreement subsequent to such Transfer with respect to the Interests being transferred (provided that the transferee shall assume all such obligations), and if the transferring Member no longer holds any Interests, the transferring Member shall be relieved of its obligations arising under this Agreement to the extent provided in Section 14.3. Prior to any Transfer of an Interest or any portion thereof (other than pursuant to the Interest Purchase Agreement or ARTICLE 8) and as a condition thereof, and prior to any admission of an assignee as a Member, the Member making such Transfer and the assignee shall furnish the Manager, and a majority in ~~Percentage Interest~~Class B Percentages of the non-transferring Members, with such documents regarding the Transfer as the Manager or such majority of the non-transferring Members may reasonably request (in form and substance satisfactory to the Manager or such majority, as applicable), including a copy of the Transfer instrument, a ratification by the assignee of this Agreement (if the assignee is to be admitted as a Member), a legal opinion that the Transfer will not cause the Company to be characterized for federal and applicable state income tax purposes as other than a partnership, a legal opinion that the Transfer complies with applicable federal and state securities laws and a legal opinion that the Transfer will not violate the FCC Rules (including adversely affecting the qualification of the License Company as a “very small business” under the relevant FCC Rules if, and to the extent, such qualification is then required for the License Company and its Subsidiaries to retain any Auction Benefits) or this Agreement. In connection with any Transfer (other than pursuant to the

Interest Purchase Agreement or ARTICLE 8), the Company shall, at the request of the Member making such Transfer and at such Member's sole expense, use commercially reasonable efforts to cause to be made any filing required by the FCC.

Section 7.5. ~~Section 7.6. Invalid Transfers Void~~

Any purported Transfer of an Interest or any part thereof not in compliance with the provisions of this ARTICLE 7 shall be void and of no force or effect and the transferring Member shall be liable to the other Members and the Company for all liabilities, obligations, damages, losses, costs and expenses (including reasonable attorneys' fees and court costs) arising out of such non-complying Transfer.

Section 7.7. Determination of Fair Market Value

~~The Fair Market Value of Interests to be transferred or other property received pursuant to this Agreement shall be determined in accordance with this Section 7.7. For purposes of this Section 7.7, the Sellers owning a majority of the applicable Offered Interests shall have the right to act on behalf of the Sellers. Within fifteen (15) days after the delivery of the notice requiring such determination, the Sellers and American II shall attempt in good faith to agree on the Fair Market Value. If the Sellers and American II fail within fifteen (15) days thereafter to agree thereon, each of the Sellers and American II shall deliver a notice to the other appointing as its appraiser (“Appraiser”) an independent accounting or investment banking firm or appraisal firm of nationally recognized standing. The Sellers and American II by mutual agreement shall also appoint a third Appraiser. If after appointment of the two Appraisers, the Sellers and American II are unable to agree upon a third Appraiser, such appointment shall be made within fifteen (15) days of the request by the American Arbitration Association, or any organization successor thereto, from a panel of arbitrators having experience in the appraisal of the type of property then the subject of appraisal. The decisions of the three Appraisers so appointed and chosen shall be given within thirty (30) days after the selection of such third Appraiser. If the determination of one Appraiser differs from the middle determination by more than twice the amount by which the other determination differs from the middle determination, then the determination of such Appraiser shall be excluded, the remaining two determinations shall be averaged and such average shall be binding and conclusive on the parties; otherwise the average of all three determinations shall be binding and conclusive. The Sellers' obligation to provide a Third Party Offer Notice pursuant to Section 7.3(a) shall not be applicable until the date of delivery of such determination to American II. The costs of conducting any appraisal procedure shall be borne as follows: (a) the costs of the Appraiser designated by the Sellers and other costs separately incurred by the Sellers shall be borne by the Sellers; (b) the costs of the Appraiser designated by American II and other costs separately incurred by American II shall be borne by American II and (c) the costs of the third Appraiser, if any, shall be shared equally by the Sellers and American II. For purposes of this Section, the Fair Market Value of an Interest shall be equal to the amount the holder thereof would be entitled to receive pursuant to Section 13.3 if the Company's business and assets (including intangibles, such as goodwill) were sold for their Fair Market Value, all Company liabilities were paid and the Company were liquidated.~~

Section 7.6. ~~Section 7.8.~~ Acceptance of Prior Acts

Any Permitted Transferee or other Person who becomes a Member of the Company, accepts, ratifies and agrees to be bound by all actions duly taken pursuant to the terms and provisions of this Agreement by the Company prior to the date it became a Member and, without limiting the generality of the foregoing, specifically ratifies and approves all agreements and other instruments as may have been executed and delivered on behalf of the Company prior to such date and which are in force and effect on such date.

ARTICLE 8
PUT RIGHT

Section 8.1. Put

(a) Put Windows

~~During the thirty-day~~ For (i) the ninety (90) day period beginning on the fifth anniversary of the Initial Grant Date (the “First Put Window”) and (ii) the ninety (90) day period beginning on the sixth anniversary of the Initial Grant Date (the “Second Put Window”), or, in either case, the ten-day period following the ~~Reference~~ announcement of a Liquidation Event or a Deemed Liquidation Event if such announcement precedes the expiration of the period set forth in clause (i) or (ii), as applicable, above (including, for the avoidance of doubt, if such announcement precedes the fifth or sixth anniversary of the Initial Grant Date), NSM shall have the right (the “Put Right”) to require the Company to purchase all (but not less than all) of the collective Interests held by the NSM Members in exchange for payment of the Put Price in the manner specified in this Section 8.1.

(b) Put Price

Should NSM exercise its Put Right pursuant to Section 8.1(a), then the collective Interests held by the NSM Members shall be purchased by the Company at a price (the “Put Price”) equal to (a) the sum of all cash contributions made by the NSM Members to the equity capital of the Company pursuant to and in accordance with this Agreement (the “NSM Capital”), plus (b) an amount equal to a [REDACTED] per annum return on the contributions described in clause (a) above, from and including the respective dates on which such contributions were made until the date the Put Price is actually paid, calculated on the basis of the actual number of days elapsed from the applicable contribution date to the date the Put Price is actually paid, compounded annually, minus (c) all distributions (other than tax distributions made pursuant to Section 3.1(b) Section 3.2(b) previously made or deemed made to the NSM Members by the Company (collectively, the “NSM Return”); provided, that, if (x) NSM and/or the Company has acted, or failed to act, in a manner that is a Significant Violation, and (y) the Auction Benefits of the License Company are reduced or eliminated as the result of such Significant Violation, then, upon a complete redemption (including the receipt by the NSM Members of the full redemption price in cash) of the NSM Members’ Interests as set forth in Section 11.4, the Put Right shall be void and unenforceable and the applicable provisions of Section 11.4 shall govern. Notwithstanding the foregoing, if the Put Right is not exercised pursuant to Section 8.1(a) during the First Put Window, but is exercised during the Second Put Window, then the NSM Return

shall be calculated as per above, except that (i) solely for the purposes of calculating that portion of the NSM Return generated during the period commencing on the first day after the end of the First Put Window and until the date of exercise of the Put Right, the [REDACTED] per annum annual compounded return in effect will be reduced for such calculation period to [REDACTED] per annum, compounded annually, and (ii) solely for the purposes of calculating that portion of the NSM Return generated during the period commencing on the date on which the Put Right is exercised and to the date the Put Price is actually paid, the [REDACTED] per annum annual compounded return in effect for such calculation period will be reduced for such calculation period to the weighted average per annum return on the NSM Capital as calculated as of the date the Put Right is exercised, compounded annually.

(c) Option to Require Appraisal

(i) If NSM does not exercise its Put Right prior to the expiration of the Second Put Window, then, for a two (2) year period beginning on the seventh anniversary of the Initial Grant Date, NSM shall have the right, but not the obligation, to require a determination of the Fair Market Value of the Company as of the end of the preceding month (“Appraisal Anniversary”). NSM shall exercise this right by providing notice to American II, which notice shall state that it is notice of exercise of NSM’s right pursuant to this Section 8.1(c)(i).

(ii) If NSM provides American II with the notice provided for in Section 8.1(c)(i), then the Members shall thereafter proceed to determine the purchase price for the collective Interests held by the NSM Members (and any Permitted Transferees of the NSM Members) as set forth herein. Upon determination of the Fair Market Value of the Company, American II shall have the right, but not the obligation, to purchase all, but not less than all, of the collective Interests held by the NSM Members (and any Permitted Transferees of the NSM Members). Such purchase price for such Interests shall be equal to the product derived by (A) subtracting the value of the Liquidation Preference as of the Appraisal Anniversary from the Fair Market Value of the Company as of the Appraisal Anniversary, determined as set forth in this Section 8.1(c), and (B) multiplying the result by the collective Class B Percentage of the NSM Members (and any Permitted Transferees of the NSM Members), which product shall in no event be less than zero. American II shall pay the purchase price for the Interests by bank check or wire transfer, against execution and delivery by each NSM Member of an instrument of assignment in substantially the form attached hereto as Exhibit A.

(iii) In the notice referred to in Section 8.1(c)(i), NSM shall set forth its good faith estimate of the Fair Market Value. In the event that, no later than sixty (60) days after the Appraisal Anniversary, American II provides notice to NSM of its agreement to NSM's estimate of the Fair Market Value (the “American II FMV Acceptance Notice”), such determination of the Fair Market Value shall be final and binding on NSM and American II (the “Appraisal Option Parties”) as the Fair Market Value for the purposes hereof.

(iv) In the event that (A) American II provides notice to NSM no later than sixty (60) days after the Appraisal Anniversary of its rejection of NSM's estimate of the Fair Market Value or (B) American II fails to provide any notice to NSM within sixty (60) days after the Appraisal Anniversary with regard to NSM's estimate of the Fair Market Value, the Appraisal Option Parties shall use commercially reasonable efforts to appoint within seventy-five (75) days after the Appraisal Anniversary a mutually acceptable appraiser (the “Joint Appraiser”) for the purpose of determining the Fair Market Value. In the event of such appointment, the Joint Appraiser shall determine the Fair Market Value and submit a written report setting forth such Fair Market Value as determined by the Joint Appraiser, the methodologies for valuation employed by the Joint Appraiser, all information pertinent to the determination of such Fair Market Value with regard to each such methodology and the relative weights afforded to each such methodology by the Joint Appraiser (an “FMV Report”) to each of the Appraisal Option Parties no later than one hundred twenty (120) days after the Appraisal Anniversary. All costs and expenses of such appraisal shall be borne equally by the Appraisal Option Parties. The Joint Appraiser's determination of the Fair Market Value shall be final and binding on the Appraisal Option Parties as the Fair Market Value for the purposes hereof.

(v) If the Appraisal Option Parties are unable to agree on a Joint Appraiser within seventy-five (75) days after the Appraisal Anniversary, each of the Appraisal Option Parties shall independently appoint, within ninety (90) days after the Appraisal Anniversary, an appraiser (the “Independent Appraisers”) for the purpose of determining such Fair Market Value. Each Independent Appraiser shall determine the Fair Market Value and submit an FMV Report to each of the Appraisal Option Parties no later than one hundred twenty (120) days after the Appraisal Anniversary. All costs and expenses for each such appraisal shall be borne by the party on behalf of which the appraisal is being performed. In the event that the Independent Appraisers' determinations of the Fair Market Value are equal, such determination of the Fair Market Value shall be final and binding on the Appraisal Option Parties as the Fair Market Value for the purposes hereof. In the event that the Independent Appraisers' determinations of the Fair Market Value differ such that the greater exceeds the lesser by no more than ten percent (10%) of the lesser, the average of the two determinations shall be final and binding on the Appraisal Option Parties as the Fair Market Value for the purposes hereof. In the event that either of the Independent Appraisers fails to make a determination of the Fair Market Value and to submit an FMV Report no later than one hundred twenty (120) days after the Appraisal Anniversary, the determination of the Fair Market Value by the other of the Independent Appraisers shall be final and binding on the Appraisal Option Parties as the Fair Market Value for the purposes hereof.

(vi) In the event that the Independent Appraisers' determinations of the Fair Market Value differ such that the greater exceeds the lesser by more than ten percent (10%) of the lesser, then the Independent Appraisers shall jointly appoint no later than one hundred thirty (130) days after the Appraisal Anniversary an additional appraiser (the “Additional Appraiser”) for the purpose of determining the Fair Market Value. The Additional Appraiser shall determine the Fair Market Value and submit an FMV Report no later than one hundred sixty (160) days after the Appraisal Anniversary. In the event that the Independent Appraisers fail to jointly appoint the Additional Appraiser no later

than one hundred thirty (130) days after the Appraisal, either of the Appraisal Option Parties may initiate an arbitration proceeding with JAMS in the District of Columbia for the purpose of appointing a replacement for the Additional Appraiser. The appointment of such replacement for the Additional Appraiser (who, for the purposes of the remainder of this Section 8.1(c), shall also be known as the “Additional Appraiser”) and the determination of the Fair Market Value and the submission of an FMV Report to each of the Appraisal Option Parties by such appraiser shall occur as promptly as reasonably practicable. All costs and expenses for the appraisal performed by the Additional Appraiser shall be borne equally by the Appraisal Option Parties. In the event that the Additional Appraiser's determination of the Fair Market Value is no more than ten percent (10%) greater than the higher and no more than ten percent (10%) less than the lower of the Independent Appraisers’ determinations of the Fair Market Value, the average of the three (3) determinations shall be final and binding on the Appraisal Option Parties as the Fair Market Value for the purposes hereof. In the event that the Additional Appraiser's determination of the Fair Market Value is no more than ten percent (10%) greater than or no more than ten percent (10%) less than one of the Independent Appraisers’ determinations of the Fair Market Value and is more than ten percent (10%) greater than or more than ten percent (10%) less than the other of the Independent Appraisers’ determinations of the Fair Market Value (the “Non-Conforming Appraisal”), the Non-Conforming Appraisal shall be discarded, and the average of the remaining determinations shall be final and binding on the Appraisal Option Parties as the Fair Market Value for the purposes hereof. In the event that the Additional Appraiser’s determination of the Fair Market Value is more than ten percent (10%) greater than the higher or more than ten percent (10%) less than the lower of the Independent Appraisers’ determinations of the Fair Market Value, the closer of the Independent Appraisers’ determinations of the Fair Market Value to the Additional Appraiser's determination of the Fair Market Value shall be final and binding on the Appraisal Option Parties as the Fair Market Value for the purposes hereof.

(vii) Any appraiser appointed hereunder shall be a member of a nationally recognized business appraisal organization and shall have experience in valuing wireless telecommunications enterprises. In determining the Fair Market Value, any appraiser appointed hereunder shall determine the value of the Company as a whole and shall not apply any valuation premiums or discounts to the value of the Interests (such as for minority interest, control or lack of marketability). At any time prior to final determination of the Fair Market Value as set forth hereunder, each of the Appraisal Option Parties shall be entitled to submit to any appraiser (and, if such right is exercised, shall also submit to the other of the Appraisal Option Parties) any information related to the valuation of the Company that such Appraisal Option Party considers relevant, and such information shall be accorded the weight that such appraiser deems appropriate. Each of the Appraisal Option Parties shall have an opportunity to comment on all information provided to any appraiser by the other of the Appraisal Option Parties.

(viii) The closing of any purchase of Interests pursuant to this Section 8.1(c) shall take place on the twentieth (20th) day after (A) in the event of determination of the Fair Market Value pursuant to Section 8.1(c)(iii), the effective date of American II FMV Acceptance Notice or (B) in the event of determination of the Fair Market Value pursuant

to Section 8.1(c)(iv)-(vi), the effective date of the submission of the FMV Report applicable to the final determination of the Fair Market Value; provided, however, that (x) if the transaction is subject to any prior regulatory approval, then the closing shall take place on the tenth (10th) day following the receipt of such regulatory approval, (y) if the date of the closing falls on a weekend or on a federal holiday, the closing shall take place on the next regular Business Day, and (z) if NSM and American II agree to another time for the closing, the closing may take place at such other time as mutually agreed.

Section 8.2. Conditions to Closing

(a) The Company's obligations to consummate the transactions contemplated by the Put Right shall be subject to the satisfaction (or express waiver by the Company) of each of the following conditions:

(i) The parties shall have obtained all required consents, approvals, notices and waivers from governmental or regulatory bodies, including without limitation, any required FCC approval of the transactions contemplated by the Put Right by an effective order, decision, or public notice of the FCC or a duly-authorized bureau or division thereof (or, at the Company's and American II's election, within five (5) Business Days after such order, decision, or public notice shall have become final and no longer subject to further reconsideration, review or appeal);

(ii) The waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, if applicable, shall have expired or been terminated; and

(iii) At the closing of the transactions contemplated by the Put Right, all of the collective Interests held by the NSM Members shall be transferred to the Company free and clear of all Liens, and the NSM Members shall have furnished to the Company documentation reasonably satisfactory to American II providing for the release of all then-existing Liens on such Interests.

(b) NSM's obligations to consummate the transactions contemplated by the Put Right shall be subject to the satisfaction (or express waiver by NSM) of each of the following conditions:

(i) The parties shall have obtained all required consents, approvals, notices and waivers from governmental or regulatory bodies, including without limitation, FCC approval of the transactions contemplated by the Put Right by an effective order, decision, or public notice of the FCC or a duly-authorized bureau or division thereof; and

(ii) The applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, shall have expired or been terminated.

(c) Each of the parties hereto agrees to use all commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties hereto in doing, all the things reasonably necessary, proper or advisable, in the most expeditious manner practicable, to satisfy the conditions set forth in this Section 8.2 and to

consummate and make effective the transactions contemplated by the Put Right and this ARTICLE 8.

Section 8.3. Closing

(a) At the closing of the transactions contemplated by the Put Right, the Company shall pay or cause to be paid the Put Price, by wire transfer of immediately available funds to an account of NSM (which shall be designated by NSM at least three (3) Business Days prior to the date of payment), against execution and delivery by each NSM Member of an instrument of assignment in substantially the form attached hereto as Exhibit A, on a date not later than five (5) Business Days following the satisfaction (or express waiver by American II) of each of the conditions set forth in Section 8.2(a) and the satisfaction (or express waiver by NSM) of each of the conditions set forth in Section 8.2(b), or at such other time and place as the parties may agree. Upon closing of the transactions contemplated by the Put Right, the Members other than American II shall automatically cease to be (i) Members of the Company and (ii) parties to this Agreement, in each case without any further action required of the parties hereto; provided that no such transfer shall relieve any such NSM Member from liability for any prior breach of this Agreement.

(b) The Put Price shall not be subject to any set-off or offset of whatsoever nature.

Section 8.4. Terminated Auction Purchase

If (a) the Auction is cancelled by the FCC, or the results of the Auction are dismissed in full by the FCC, because of a failure to meet both of the FCC's aggregate reserve prices applicable to the Auction; (b) the License Company fails to timely submit all of the applications for all licenses for which it was the Winning Bidder (*i.e.*, long-form applications) as a result of any action or inaction of American II or any of its Affiliates; (c) all of the License Company's applications for the licenses for which it was the Winning Bidder (*i.e.*, long-form applications) are dismissed by final action of the FCC; (d) all licenses for which the License Company was the Winning Bidder and that were granted to, and are still held by, the License Company or any of its Subsidiaries are cancelled by the FCC; or (e) the License Company does not bid in the Auction (including as a result of a termination pursuant to Section 13.1(b)) or is not the Winning Bidder for any license, then, in each instance, the License Company shall apply as promptly as practicable and permitted under the FCC Rules to obtain a refund from the FCC of all of the Auction funds previously paid by the License Company to the FCC for the Auction, and, to the extent that any upfront payments, down payments or final payments for such licenses are refunded by the FCC, (i) the License Company shall, on behalf of the Company, first pay to the NSM Members an amount equal to (A) the NSM Members' capital contributions plus (B) a [REDACTED] per annum return on the aggregate amount of capital contributions provided by the NSM Members from the date of their capital contributions through the date that such return is paid to the NSM Members (or, if earlier with respect to some or all of such equity capital contributions, the date of the return of all or part of any such equity capital contributions excluding any tax distributions made pursuant to ~~Section 3.1(b)~~[Section 3.2\(b\)](#)), compounded annually, and taking into account all distributions (including any returns of equity capital contributions but excluding any tax distributions made pursuant to ~~Section 3.1(b)~~[Section 3.2\(b\)](#)) previously made to the NSM Members by the Company plus (C) an amount equal to NSM's

reasonable, documented out-of-pocket expenses (including without limitation legal fees and expenses) incurred in connection with the transactions contemplated hereby and not otherwise previously paid or reimbursed pursuant to Section 14.11 (in the event the License Company does not have adequate capital to pay any portion of the foregoing (A), (B) or (C), then American II shall pay to the NSM Members the amount of such shortfall); (ii) the License Company shall then, to the extent any funds remain after making the payments under the foregoing (i), repay amounts due to American II under the Senior Credit Facility; and (iii) the License Company shall then, to the extent any funds remain after making the payments under the foregoing (i) and (ii), on behalf of the Company, return to the Members (other than the NSM Members) their respective amounts of equity capital previously provided by them to the Company; provided that if the License Company's applications for all licenses for which it was the Winning Bidder (*i.e.*, long-form applications) are dismissed by the FCC or the authorizations for which the License Company was the Winning Bidder and that were granted to, and are still held by, the License Company or any of its Subsidiaries are cancelled by the FCC as the result of a breach by NSM of its representations or covenants in Section 11.3(a), then the NSM Members shall not be entitled to any payment under clause (i)(B) of this Section 8.4. For the avoidance of doubt, if this Section 8.4 applies, then the rest of this ARTICLE 8 shall not apply.

ARTICLE 9 REGISTRATION RIGHT

Section 9.1. Registration Right

~~On a single occasion during the one hundred eighty day period following the fourteenth~~ At any time after the seventh (14th) anniversary of the ~~first~~ Initial Grant Date, the NSM Members may elect to cause the Company (a) to convert to a corporation (“Newco”) and (b) subject to the following provisions of this ARTICLE 9, to register for sale in an underwritten public offering (the “Offering”) shares of capital stock of Newco issued to such Members upon conversion, so long as the anticipated gross proceeds to the NSM Members from the Offering are greater than \$1,000,000 in the aggregate. If the NSM Members make such election, the Members and the Company shall promptly take such steps as may be necessary or desirable to effectuate the provisions of this ARTICLE 9.

Section 9.2. Right to Purchase—Preliminary Range

The underwriters of the Offering (who shall be selected by the NSM Members and shall be reasonably acceptable to American II) will, within thirty (30) days after delivery of such election, in good faith establish a preliminary range for the price to the public in the Offering. American II may elect to purchase all, but not less than all, of the Interests of the Company (*i.e.*, prior to the conversion into Newco) then held by the Members other than American II, at a price equal to ~~eighty five percent (85%) of~~ the midpoint of the preliminary range. If American II fails to make such election, the Offering will proceed.

Section 9.3. Right to Purchase—IPO Price

If the final price per share at which shares of capital stock of Newco are to be offered to the public (the “IPO Price”) is lower than the midpoint of the preliminary range by three percent

or more of the midpoint price, American II may elect, within twenty-four (24) hours after the determination of the IPO Price (during which time the registration statement shall not become effective), to purchase all, but not less than all, of the Interests of the Company (*i.e.*, prior to the conversion into Newco) then held by the Members other than American II at a price equal to ~~eighty five percent (85%) of~~ the IPO Price. If American II fails to make such election, the Members other than American II shall (subject to Section 9.4) have ninety (90) days to complete the Offering.

Section 9.4. Right to Defer the Offering

If American II determines that a registration pursuant to this ARTICLE 9 would interfere with any pending or contemplated material acquisition, disposition, financing or other material transaction involving the Company or American II or any of its Affiliates or would require the Company to disclose material information that would otherwise not be disclosed at such time (and such disclosure would be prejudicial to the Company or American II), the Company will defer such registration at the request of American II; provided that the aggregate of all such deferrals shall not exceed one hundred eighty (180) days in any three hundred sixty-day period.

Section 9.5. Registration Expenses

Except as hereinafter provided, all expenses incident to the Company's performance of or compliance with this ARTICLE 9 shall be borne by the Company. In addition, the Company shall pay or reimburse the Members participating in the Offering (the "Participating Members") for the reasonable fees and expenses of one attorney to the Participating Members selected by NSM incurred in connection with a registration pursuant to this ARTICLE 9. Except as provided in the immediately preceding sentence, each Participating Member shall bear the costs and expenses of any underwriters' discounts and commissions or other fees, brokerage fees or transfer taxes relating to the Interests in the Company or shares of capital stock of Newco sold by such Member and the fees and expenses of any other attorneys, accountants or other representatives retained by such Member.

Section 9.6. Registration Procedures

If Newco is required to effect the Offering, Newco shall, as promptly as reasonably practicable:

(a) prepare and file with the SEC a registration statement on an appropriate form, and thereafter use its reasonable best efforts to cause such registration statement to become effective and to remain effective and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective and to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement until the lesser of (i) such time as all of such securities have been disposed of in accordance with the intended methods of disposition by the Participating Members set forth in such registration statement and (ii) ninety (90) days; provided that Newco shall, at least ten (10) Business Days prior to filing a registration statement or prospectus or any amendment or supplement thereto, furnish to each Participating Member and American II copies of such registration statement or

prospectus (or amendment or supplement) as proposed to be filed (including, upon the request of any Participating Member or American II, documents to be incorporated by reference therein) which documents shall be subject to the reasonable review and comments of such Participating Member (and its attorneys) and American II during such ten-Business Day period and Newco shall not file any registration statement, any prospectus or any amendment or supplement thereto (or any such documents incorporated by reference) containing any statements with respect to such Participating Member to which such Participating Member shall reasonably object in writing or any statements with respect to the Company, the License Company or Newco to which American II shall reasonably object in writing;

(b) furnish to American II and each Participating Member and to any underwriter such number of conformed copies of such registration statement and of each such amendment and supplement thereto (in each case including all exhibits), the prospectus contained in such registration statement (including each preliminary prospectus and any summary prospectus) and any other prospectus filed under Rule 424 or Rule 430A under the Securities Act, in conformity with the requirements of the Securities Act, documents incorporated by reference in such registration statement, amendment, supplement or prospectus and such other documents (in each case including all exhibits) as American II or a Participating Member or underwriter may reasonably request;

(c) after the filing of the registration statement, promptly notify American II and each Participating Member of the effectiveness thereof and of any stop order issued or threatened by the SEC and take all reasonable actions required to prevent the entry of such stop order or to remove it if entered and promptly notify American II and such Participating Member of such lifting or withdrawal of such order;

(d) use its reasonable best efforts to register or qualify all shares held by the Participating Members and other securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as the Participating Members holding a majority of the shares to be included in such registration or the underwriter shall reasonably request, to keep such registration or qualification in effect for so long as such registration statement remains in effect, and take any other action which may be reasonably necessary or advisable to enable the Participating Members to consummate the disposition in such jurisdictions of the securities owned by such Participating Members, except that Newco shall not for any such purpose be required to qualify generally to do business as a foreign corporation in any jurisdiction wherein it would not but for the requirements of this Section 9.6(d) be obligated to be so qualified, to subject itself to taxation in any such jurisdiction or to consent to general service of process in any such jurisdiction;

(e) use its reasonable best efforts to cause all shares covered by such registration statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the Participating Members to consummate the disposition of such shares;

(f) furnish to each Participating Member and to each underwriter, if any, a signed counterpart of (i) an opinion of counsel for Newco addressed to such Participating Member and such underwriter on which opinion both ~~the~~such Participating ~~Members~~Member and such

underwriter are entitled to rely and (ii) a “comfort” letter signed by the independent public accountants who have certified Newco's financial statements included in such registration statement, each in customary form and covering such matters of the type customarily covered by opinions or comfort letters, as the case may be, as the managing underwriter therefor reasonably ~~request~~requests. Newco shall use its commercially reasonable efforts to have such comfort letters addressed to each Participating Member;

(g) immediately notify American II and each Participating Member at any time when a prospectus relating thereto is required to be delivered under the Securities Act, upon discovery that, or upon the happening of any event as a result of which, the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances under which they were made, and as promptly as practicable under the circumstances prepare and furnish to American II and each such Participating Member a reasonable number of copies of any supplement to or amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances under which they were made;

(h) make available for inspection by any Participating Member, any underwriter participating in any disposition pursuant to such registration statement and any attorney, accountant or other professional retained by any such Participating Member or underwriter (collectively, the “Inspectors”), all financial and other records, pertinent corporate documents and properties of Newco (collectively, the “Records”) as shall be reasonably necessary to enable them to exercise their due diligence responsibility, and shall cause Newco's officers, directors and employees to supply all information reasonably requested by any Inspectors in connection with such registration statement. Each such Participating Member agrees that information obtained by it as a result of such inspections shall be deemed confidential and shall not be disclosed or used by it as the basis for any market transactions in the securities of Newco or its Affiliates unless and until such information is made generally available to the public. Each such Participating Member further agrees that it shall, upon learning that disclosure of such Records is sought in a court of competent jurisdiction, give notice to Newco and allow Newco, at its expense, to undertake appropriate action to prevent disclosure of the Records deemed confidential;

(i) use its reasonable best efforts to list all shares covered by such registration statement on any securities exchange or quotation system on which any of Newco's shares are then listed or traded; and

(j) otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the SEC, and make available to its security holders, as soon as reasonably practicable, an earnings statement or such other document that shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder.

Newco may require each Participating Member to promptly furnish to Newco, as a condition precedent to including such Participating Member's shares in the Offering, such written

information regarding such Participating Member and the distribution of such securities as Newco may from time to time reasonably request in writing.

Each Participating Member agrees that upon receipt of any notice from Newco of the happening of any event of the kind described in Section 9.6(g), such Participating Member shall forthwith discontinue such Participating Member's disposition of shares pursuant to the registration statement relating to such shares until such Participating Member's receipt of the copies of the supplemented or amended prospectus contemplated by Section 9.6(g) and, if so directed by Newco, shall deliver to Newco (at Newco's expense) all copies, other than permanent file copies, then in such Participating Member's possession, of the prospectus and any amendments or supplements thereto relating to such shares current at the time of receipt of such notice. In the event Newco shall give such notice, Newco shall extend the period during which the effectiveness of such registration statement shall be maintained by the number of days during the period from and including the date of the giving of notice pursuant to Section 9.6(g) to the date when Newco shall make available to the Participating Members a prospectus supplemented or amended to conform with the requirements of Section 9.6(g).

ARTICLE 10

OTHER AGREEMENTS

Section 10.1. Exclusivity

(a) American II

American II's and its Affiliates' participation in the Auction shall not be limited in any way by American II's participation in the Auction through the License Company. Nothing herein shall be construed or interpreted to limit American II or its Affiliates from participating or not participating in the Auction without an investment in a Designated Entity.

(b) NSM

None of Doyon, Limited, NSM or any Affiliates that any of the foregoing control shall participate directly or indirectly in the Auction (including by providing debt or equity financing or other assistance to a bidder) except as a Member of the Company and through the License Company, or the ownership of up to one percent (1%) of any public company.

Section 10.2. Confidentiality

(a) Non-Disclosure

Each party hereto agrees that it shall, and shall cause each of its Affiliates, and each of its and their respective partners, members, managers, shareholders, directors, officers, employees and agents (collectively, "Agents") to maintain the confidentiality of all non-public information disclosed to it by the other party or the definitive agreements contemplated herein or through its interest in the Company or the operation of its business or the use or ownership of its assets, by limiting internal disclosure of any such information to those who have an actual need to know such information in connection with the Auction or the transactions contemplated hereby (which shall include disclosure to a party's attorneys, accountants, potential lenders, lenders, potential

investors, investors, financial advisors and consultants), and shall not, without the prior written consent of the disclosing party, use such information other than in connection with the transactions contemplated herein; provided, however, that the confidentiality obligations in this Section 10.2(a) do not apply to information that (i) was or becomes available to the public through no action by the receiving party or (ii) was or becomes available to such receiving party on a non-confidential basis.

(b) Exceptions

Notwithstanding Section 10.2(a), any party hereto may disclose the existence and terms of this Agreement and the transactions contemplated hereby (i) to federal and state regulatory agencies in connection with applications for approval of such transactions (or, in the case of any regulated Affiliate of a Member, in connection with audits by the applicable regulatory authorities), including to the FCC as part of any application to participate in the Auction and/or any application for a license or licenses won in the Auction, it being understood and agreed that the contents of such applications are generally available to the public, (ii) to financial institutions in connection with financings of the transactions contemplated hereby and (iii) if counsel for any party advises that a press release or public disclosure is required by Applicable Law or the applicable rules of any stock exchange, then the parties shall use their commercially reasonable efforts to cause a mutually acceptable press release to be issued, and in all events the party required to make such disclosure shall be free to do so; provided that in each case (other than clause (iii) above and to the extent submitted to the FCC as part of the contents of an application to participate in the Auction or a post-Auction application for licenses on which the License Company is the Winning Bidder) commercially reasonable efforts are used to seek confidential treatment from any such person to whom such information is disclosed and the other parties hereto are notified contemporaneously of such disclosure; provided, further, that the parties acknowledge that the Bidding Protocol constitutes valuable trade secrets of the Company and is extremely sensitive and confidential, and shall not be disclosed by the parties hereto unless disclosure is compelled by regulatory or other legal process and then only upon adequate prior notice to the other party, which party shall have an opportunity to seek an appropriate protective order, and such disclosure shall be made only to the extent necessary to comply with the requirements of the regulatory or legal process under which it is so compelled.

Section 10.3. Arbitration

(a) Arbitration

Except as set forth in Section 5.5(c) and in Section ~~5.5~~8.1(c)(vi), any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Within fifteen (15) days after the commencement of arbitration, each party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within ten (10) days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association. The place of arbitration shall be Chicago, Illinois or such other place as the parties may agree. The arbitrators shall be

knowledgeable in the wireless broadband industry and public auctions of FCC licenses. Notwithstanding the foregoing, if the arbitration is consolidated with a then pending arbitration proceeding pursuant to Section 10.3(d), then the arbitrators and the place of arbitration for such then pending proceeding shall be the arbitrators and place of arbitration hereunder.

(b) Interim Relief

Either party may apply to the arbitrators seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy).

(c) Award

The award shall be made within ninety (90) days of the filing of the notice of intention to arbitrate, and the arbitrators shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the parties and the arbitrators if necessary.

(d) Consent to Consolidation of Arbitrations

Each party hereto irrevocably consents to consolidating before the same arbitrators any arbitration proceeding under this Agreement with any other arbitration proceedings involving any party hereto that may be then pending or that are brought under the Senior Credit Facility or any other Related Agreement.

(e) Venue

Each party hereto irrevocably and unconditionally consents to the exclusive jurisdiction of the courts of the State of Delaware and of the United States District Courts located in the State of Delaware for entering of any judgment on the award rendered by the arbitrators; provided that if such courts do not have jurisdiction to enforce such judgment, then the parties may enter such judgment in any other court having jurisdiction thereof.

Section 10.4. Right of First Refusal for Sale of License

~~(a) Subject to Section 10.4(d), if at any time the Company, License Company, or a Subsidiary of the License Company desires to sell or receives and wishes to accept a bona fide written binding offer from a bona fide third party (“Buyer”) for the purchase of one or more licenses by the third party (a “License Offer”), then the Company shall give notice of such License Offer (the “License Offer Notice”) to American II, which notice shall identify the Buyer, enclose a copy of the License Offer and irrevocably offer to American II the right to purchase the subject license(s) at the same purchase price, which must be payable in cash, and on the other terms and conditions as specified in the License Offer; provided that American II shall be entitled to pay for the subject license(s) with instruments of indebtedness to the extent the License Offer contemplates the delivery of instruments of indebtedness; provided further that the~~

~~License Offer shall not contain any terms or conditions that are commercially unreasonable for American II to accept. American II may exercise its right to purchase the subject license(s) by notifying Company in writing of its election to purchase within thirty (30) days after the delivery by Company to American II of the License Offer Notice. If any unjust enrichment payment is due to the FCC under the FCC Rules as a result of the purchase of the subject license(s) by American II, American II shall promptly when due pay such unjust enrichment payment or reimburse the Company for the unjust enrichment payment if Company, the License Company, or a Subsidiary of the License Company is required to pay such unjust enrichment payment.~~

~~(b) Closing of Purchase~~

~~If American II duly elects to purchase the subject license(s), the closing of such purchase (the “License Closing”) shall take place on a date agreed to by the Company and American II, but in no event later than thirty (30) days after the later to occur of (i) the issuance of an order, decision, or public notice by the FCC or a duly authorized bureau or division thereof granting approval of such transaction and (ii) such order, decision, or public notice becoming final and no longer subject to reconsideration, review or appeal, unless finality is waived by American II. The Company shall deliver to American II such customary instruments of assignment with respect to the subject license(s) as may be reasonably requested by American II to vest in American II all right, title and interest therein.~~

~~(c) Sale to Third Party~~

~~If American II fails to exercise its right to purchase the subject license(s), the Company, License Company, or a Subsidiary of the License Company may accept the License Offer and sell the subject license(s) to the Buyer; provided that such sale shall be at a price, and on other terms and conditions, no less favorable than those specified in the License Offer Notice and otherwise in accordance with this Section 10.4. If such sale is not consummated within ninety (90) days after the expiration of the applicable time periods specified in paragraph (a) above, subject to an automatic extension for up to an additional ninety (90) days to the extent necessary to obtain any required governmental or regulatory approval, including FCC approval, such right to sell shall lapse and the License Offer and subject license(s) shall again be subject to the provisions of this Section 10.4.~~

~~(d) Exceptions~~

~~This Section 10.4 shall not apply, and American II shall have no rights hereunder, with respect to any transfers of licenses solely for the purpose of generating the funds required to satisfy the obligations of the License Company and its Subsidiaries that are then due and payable under the Interest Purchase Agreement.~~

ARTICLE 11
REPRESENTATIONS AND COVENANTS

Section 11.1. Representations of the Members

Each of the Members represents and warrants to the Company and to each other Member as follows:

(a) It is a corporation or limited liability company, as the case may be, duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and has the requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted and as proposed to be conducted.

(b) It has the requisite power and authority to execute, deliver and perform this Agreement and the Related Agreements to which it is a party and each other instrument, document, certificate and agreement required or contemplated to be executed, delivered and performed by it hereunder.

(c) This Agreement and the Related Agreements to which it is a party have each been duly executed and delivered by it and constitute its valid and binding obligations, enforceable against it in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and by general principles of equity.

(d) Neither its execution, delivery and performance of this Agreement, nor its consummation of the transactions contemplated hereunder or under the Related Agreements to which it is a party, shall (i) conflict with, or result in a breach or violation of, any provision of its constituent documents; (ii) constitute, with or without the giving of notice or passage of time or both, a material breach, violation or default, create a material Lien, or give rise to any right of termination, modification, cancellation, prepayment or acceleration, under (A) any Applicable Law or license except as may be provided under the FCC Rules or (B) any material note, bond, mortgage, indenture, lease, agreement or other instrument, in each case which is applicable to or binding upon it or any of its assets or (iii) require any consent which has not already been obtained except as may be required under the FCC Rules.

(e) ~~There is~~ Other than as has been disclosed to the Company and such other Members it has no knowledge of any (i) action, claim, proceeding, investigation or controversy pending or, to its knowledge, threatened against it or any of its properties or assets or (ii) judgment, order, award or consent decree outstanding against or affecting it, in either event that could have a material adverse effect on its ability to consummate the transactions contemplated under this Agreement or to fulfill its obligations hereunder.

(f) It shall have on each date it is required to make a capital contribution under this Agreement cash available to it in an amount sufficient to fully fund such capital contribution.

Section 11.2. Covenants of the Members

Each Member shall (a) timely furnish, and shall cause its Affiliates to timely furnish, such information as may be required to be provided under FCC Rules in, or in connection with, the License Company's short-form application to participate in the Auction and post-Auction long-form application and associated filings; (b) subject to Section 10.1, not participate, and shall cause Affiliates that it controls to refrain from participating, directly or indirectly, in the Auction or in connection with any other actual or potential bidder in the Auction, to the extent such action would disqualify, restrict or limit the License Company from participating fully in the Auction or otherwise would violate any applicable FCC Rule; and (c) shall take measures to comply with

the FCC's anti-collusion rule at Section 1.2105 of the FCC Rules and the FCC's anonymous bidding procedures applicable to the Auction.

Section 11.3. Representations and Covenants of NSM

(a) NSM hereby represents and covenants that:

(i) it shall cause the License Company to take all actions necessary and proper under FCC Rules for the License Company to timely file the post-Auction long-form application and any other filings required to be filed under FCC Rules in connection therewith or with the License Company's short-form application to participate in the Auction; provided that the parties acknowledge and agree that NSM's ability to comply with this Section 11.3(a)(i) depends upon American II's compliance with its obligations under this Agreement, the Senior Credit Facility and the other Related Agreements, including Section 2.2 and Section 11.2 of this Agreement and the funding obligations under the Senior Credit Facility, and, if American II breaches its obligations (including under Section 2.2 or Section 11.2 or its funding obligations under the Senior Credit Facility) and such breach results in NSM's failure to comply with this Section 11.3(a)(i), then NSM shall not be in breach of this Section 11.3(a)(i);

(ii) other than as set forth on Schedule 11.3(a)(ii), neither it, its Affiliates, its controlling interests, nor Affiliates of its controlling interests (A) is now, or has ever been, in default on any FCC license and (B) is now, or has ever been, delinquent on any non-tax debt owed to any federal agency; and

(iii) on the Initial Application Date and for so long thereafter as NSM is the Manager and to the extent as may be required under FCC Rules in order for the License Company and its Subsidiaries to retain the Auction Benefits, NSM shall qualify as, and will not knowingly take any action without American II's consent to cause it to lose the status of, a Qualified Person, as if NSM itself was the applicant (or licensee).

(b) NSM shall not permit the amendment, modification or waiver of any provision of its certificate of formation or limited liability company agreement (as amended and restated on October 3, 2014 and as further amended on October 10, 2014 and on February 12, 2015), nor shall NSM enter into any agreement, arrangement or understanding with any Person that could reasonably be expected to result in a material breach or default of any representation or covenant of NSM contained in this Agreement.

Section 11.4. Failure to Qualify as a Qualified Person

~~(a) Failure to Qualify Not Resulting from Change in Applicable FCC Rules~~

~~(i) Failure to Qualify Not Resulting from Significant Violation. If the FCC determines that NSM fails to qualify and remain qualified as a Qualified Person as required under Section 11.3(a)(iii), and such failure (A) causes the License Company or any of its Subsidiaries to fail to retain any Auction Benefits and the corresponding unjust enrichment payments in respect thereof have become due and payable to the FCC and (B) has not resulted from a change in applicable FCC Rules (including through the~~

~~promulgation of an order or similar action by the FCC) or any action or failure to act by NSM and/or the Company that is a Significant Violation, then NSM agrees that, at the written request of American II, NSM shall pay American II [REDACTED], as liquidated damages and not as a penalty. Such liquidated damages amount shall be payable on demand, subject to the provisions in the next sentence. Upon the written request of American II requiring NSM to pay such liquidated damages, NSM and the Company shall within five (5) Business Days thereafter file with the FCC an appropriate application for transfer of control of the applicable licenses held by the License Company and its Subsidiaries (and American II shall provide such assistance and information as is reasonably requested by NSM or the Company). Upon the written request of American II requiring such liquidated damages, following receipt of FCC approval, and subject to and concurrently with American II's receipt of the aforementioned liquidated damages payment, the Company (or, in the event the Company does not have adequate capital, American II) shall refund capital to the NSM Members in an amount equal to the aggregate amount of equity capital contributions previously made by the NSM Members to the Company, less any prior distributions to the NSM Members (other than tax distributions pursuant to Section 3.1(b)), in full redemption of the NSM Members' Interests; provided that American II shall promptly pay to the FCC, on behalf of the License Company and its Subsidiaries, an amount equal to the aggregate amount of all payments due to the FCC as a result of, or as a condition to, the redemption of the NSM Members' Interests (including any unjust enrichment payment) pursuant to American II's written request. Following FCC approval of the redemption (if required), NSM shall resign as Manager of the Company, such resignation to be effective on the consummation of the redemption and the appointment of a replacement Manager. Upon completion of such payment in full redemption, the NSM Members shall automatically cease to be (x) Members of the Company and (y) parties to this Agreement, in each case without any further action required of the parties hereto. Such liquidated damages set forth in this Section 11.4(a)(i) shall be the sole and exclusive remedy of American II for any such failure to so qualify under the circumstances described in this Section 11.4(a)(i); provided that such liquidated damages shall not be deemed a remedy for, or otherwise effect the remedies available to, American II with respect to any other breaches by NSM of this Agreement.~~

~~(ii) *Failure to Qualify Resulting from Significant Violation.* If the FCC determines that NSM fails to qualify and remain qualified as a Qualified Person as required under Section 11.3(a)(iii), or that the License Company or any of its Subsidiaries are not qualified to retain the Auction Benefits and such failure (A) causes the License Company or any of its Subsidiaries to fail to retain any Auction Benefits and the corresponding unjust enrichment payments in respect thereof have become due and payable to the FCC, (B) has not resulted from a change in applicable FCC Rules (including through the promulgation of an order or similar action by the FCC) and (C) has resulted from an action or failure to act by NSM and/or the Company that is a Significant Violation, then NSM agrees that, upon the written request of American II, NSM and the Company shall within five (5) Business Days thereafter file with the FCC an appropriate application for transfer of control of the applicable licenses held by the License Company and its Subsidiaries (and American II shall provide such assistance and information as is reasonably requested by NSM or the Company). Upon the written~~

~~request of American II (which must be made within 60 days following the date on which the Auction Benefits or portion thereof are forfeited), following receipt of FCC approval, the Company (or, in the event the Company does not have adequate capital, American II) shall refund capital to the NSM Members in an amount equal to the aggregate amount of equity capital contributions previously made by the NSM Members to the Company, less (y) any prior distributions to the NSM Members (other than tax distributions pursuant to Section 3.1(b)), and (z) [REDACTED] (as liquidated damages and not as a penalty), in full redemption of the NSM Members' Interests; provided that American II shall promptly pay to the FCC, on behalf of the License Company and its Subsidiaries, an amount equal to the aggregate amount of all payments due to the FCC as a result of, or as a condition to, the redemption of the NSM Members' Interests (including any unjust enrichment payment) pursuant to American II's written request. Following FCC approval of the redemption (if required), NSM shall resign as Manager of the Company, such resignation to be effective on the consummation of the redemption and the appointment of a replacement Manager. Upon completion of such payment in full redemption, the NSM Members shall automatically cease to be (x) Members of the Company and (y) parties to this Agreement, in each case without any further action required of the parties hereto. The rights set forth in this Section 11.4(a)(ii) shall be the sole and exclusive remedy of American II for any such failure to so qualify under the circumstances described in this Section 11.4(a)(ii); provided that such rights shall not be deemed a remedy for, or otherwise effect the remedies available to, American II with respect to any other breaches by NSM of this Agreement.~~

~~(b) Failure to Qualify Resulting from Change in Applicable FCC Rules. If NSM fails to qualify and remain qualified as a Qualified Person as required under Section 11.3(a)(iii) and such failure results from, whether or not as a result of~~ a change in applicable FCC Rules ~~(including through the promulgation of an order or similar action by the FCC)~~ rules, then the parties shall promptly take reasonable steps to enable NSM to so qualify; provided that the relative economic and other rights and benefits expected to be derived by the parties hereunder are preserved. ~~Should such failure to so qualify have resulted from a Significant Violation, the NSM Members shall be obligated to pay to American II [REDACTED] (as liquidated damages and not as a penalty).~~

ARTICLE 12

EXCULPATION AND INDEMNIFICATION

Section 12.1. No Personal Liability

(a) Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Indemnified Person (as defined in Section 12.1(b)) shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being an Indemnified Person.

(b) No Member or its Affiliates, or any of their respective shareholders, directors, officers, employees, agents, members, managers or partners (each, an “Indemnified Person”) shall be liable, responsible or accountable in damages or otherwise to the Company or to any other Indemnified Person for any act or omission performed or omitted by an Indemnified Person

in connection with the transactions contemplated hereby, whether for mistake of judgment or negligence or other action or inaction, unless such action or omission constitutes willful misconduct, gross negligence or bad faith. Each Indemnified Person may consult with counsel, accountants and other experts in respect of the affairs of the Company and such Indemnified Person shall be fully protected and justified in any action or inaction which is taken in good faith in accordance with the advice or opinion of such counsel, accountants or other experts, provided that they shall have been selected with reasonable care.

Section 12.2. Indemnification by Company

To the maximum extent permitted by Applicable Law, the Company shall protect, indemnify, defend and hold harmless each Indemnified Person for any acts or omissions performed or omitted by an Indemnified Person (in its capacity as such) unless such action or omission constituted willful misconduct, gross negligence or bad faith. The indemnification authorized under this Section 12.2 shall include payment on demand (with appropriate evidence of the amounts claimed) of reasonable attorneys' fees and other expenses incurred in connection with, or in settlement of, any legal proceedings between the Indemnified Person and a third party and the removal of any Liens affecting any property of the Indemnified Person. Such indemnification rights shall be in addition to any and all rights, remedies and recourse to which any Indemnified Person shall be entitled, whether or not pursuant to the provisions of this Agreement, at law or in equity. The indemnities provided for in this Section 12.2 shall be recoverable only from the assets of the Company, and there shall be no recourse to any Member or other Person for the payment of such indemnities.

Section 12.3. Notice and Defense of Claims

(a) Notice of Claim. If any action, claim or proceeding (each, a “Claim”) shall be brought or asserted against any Indemnified Person in respect of which indemnity may be sought from the Company under Section 12.2, the Indemnified Person shall give prompt written notice of such Claim to the Company, which may assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Person and the payment of all of such counsel's fees and expenses; provided that any delay or failure to so notify the Company shall relieve the Company of its obligations hereunder only to the extent, if at all, that it is prejudiced by reason of such delay or failure. Any such notice shall refer to Section 12.2 and describe in reasonable detail the facts and circumstances of the Claim being asserted.

(b) Defense by the Company. If the Company undertakes the defense of the Claim, the Company shall keep the Indemnified Person advised as to all material developments in connection with any Claim, including by promptly furnishing the Indemnified Person with copies of all material documents filed or served in connection therewith. The Indemnified Person shall have the right to employ one separate firm per jurisdiction with respect to any of the foregoing Claims and to participate in the defense thereof, but the fees and expenses of such firm shall be at the expense of the Indemnified Person unless both the Indemnified Person and the Company are named as parties and representation by the same counsel is inappropriate due to actual differing interests between them; provided that under no circumstances shall the Company be liable for the fees and expenses of more than one law firm per jurisdiction in any of the foregoing Claims for the Indemnified Persons, taken collectively and not separately. The

Company may, without the Indemnified Person's consent, settle or compromise any Claim or consent to the entry of any judgment if such settlement, compromise or judgment involves only the payment of money damages by the Company (which payment is made or adequately provided for at the time of such settlement, compromise or judgment) or provides for the unconditional release by the claimant or plaintiff of the Indemnified Person and its Affiliates from all liability in respect of such Claim and does not impose injunctive relief against any of them. The Indemnified Person shall provide reasonable assistance to the Company in the defense of the Claim. As between the Company, on the one hand, and the Indemnified Persons, on the other hand, any matter that is not agreed to unanimously by the Indemnified Persons shall be determined by the Indemnified Person that is a party to this Agreement.

(c) Defense by the Indemnified Person. If the Company, within twenty (20) Business Days after receiving written notice of any such Claim, fails to assume the defense thereof, the Indemnified Person shall have the right, subject to the right of the Company at any time thereafter to assume such defense pursuant to the provisions of this ARTICLE 12, to undertake the defense, compromise or settlement of such Claim for the account of the Company.

(d) Advancement of Expenses. Unless the indemnifying party shall have assumed the defense of any Claim pursuant to Section 12.3(b), the Company shall advance to the Indemnified Person any of its reasonable attorneys' fees and other costs and expenses incurred in connection with the defense of any such Claim. Each Indemnified Person shall agree in writing prior to any such advancement, that if it receives any such advance, such Indemnified Person shall reimburse the Company for such fees, costs, and expenses to the extent that it shall be determined that it was not entitled to indemnification under this ARTICLE 12.

(e) Contribution. Notwithstanding any of the foregoing to the contrary, the provisions of this ARTICLE 12 shall not be construed so as to provide for the indemnification of any Indemnified Person for any liability to the extent (but only to the extent) that such indemnification would be in violation of Applicable Law or to the extent such liability may not be waived, modified or limited under Applicable Law, but shall be construed so as to effectuate the provisions of this ARTICLE 12 to the fullest extent permitted by Applicable Law; provided that, if and to the extent that the Company's indemnification obligation under this ARTICLE 12 is unenforceable for any reason, then the Company hereby agrees to make the maximum contribution permissible under Applicable Law to the payment and satisfaction of the losses of the Indemnified Person, except to the extent such losses are found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from the Indemnified Person's gross negligence or willful misconduct or bad faith.

ARTICLE 13 DISSOLUTION AND TERMINATION

Section 13.1. No Withdrawal

(a) Except as expressly provided in this Agreement or as otherwise provided by Applicable Law, (i) no Member shall have the right, and each Member hereby agrees not, to dissolve, terminate or liquidate the Company, or to resign or withdraw as a Member and (ii) NSM shall have no right, and NSM hereby agrees not to, resign or withdraw as the Manager.

(b) If (i) there is any generally applicable change in FCC Rules that is effective prior to the date on which the first round of bidding in the Auction commences and that has the effect of eliminating or substantially reducing the Auction Benefits to be derived by the License Company in the Auction or (ii) the first round of bidding in the Auction has not commenced on or before March 31, 2015, then either Member may at any time prior to the date that is two (2) Business Days prior to the date on which the first round of bidding in the Auction commences, give written notice to the other Member that American II shall withdraw as a Member. Upon the delivery of such notice, (A) this Agreement and all Related Agreements shall terminate, (B) any amounts outstanding under the Senior Credit Facility shall be repaid in full, (C) American II's Interests shall be redeemed for an aggregate amount equal to the sum of (1) \$850 and (2) the capital contributed to the Company by American II on or prior to such date pursuant to Section 2.2(b), without any action required by American II and American II shall cease to be a Member upon such redemption; provided that such termination and redemption shall not cause a dissolution of the Company, (D) NSM, the Company, and the License Company shall be free (subject to the provisions of Section 10.2 and such other provisions that survive the termination of this Agreement) to participate in the Auction without further obligation to American II, it being understood that the rights under Section 4 of the Bidding Protocol shall continue in force and effect in accordance with its terms and (E) American II and its Affiliates shall be free (subject to the provisions of Section 10.2 and such other provisions that survive the termination of this Agreement) to participate in the Auction without further obligation to NSM, the Company or the License Company, it being understood that the rights under Section 4 of the Bidding Protocol shall continue in force and effect in accordance with its terms; provided, further, that if the License Company has made the upfront payment to the FCC, and if the License Company applies as promptly as practicable and permitted under the FCC Rules to obtain a refund from the FCC of all of the Auction funds previously paid by the License Company to the FCC for the Auction, then the amounts due to American II under (C) above shall not be due until the License Company receives such refund; provided, further, that such payments to American II and the other provisions set forth in this subsection shall be subject to Section 8.4 (if there is any conflict between this subsection and Section 8.4, Section 8.4 shall control).

Section 13.2. Dissolution

The Company shall be dissolved upon the written determination of the Manager to dissolve the Company, if approved by American II if required pursuant to Section 6.3, but only on the effective date of dissolution specified by the Manager in such determination.

Section 13.3. Procedures Upon Dissolution

(a) General. If the Company dissolves, it shall commence winding up pursuant to the appropriate provisions of the Act and the procedures set forth in this Section 13.3. Notwithstanding the dissolution of the Company, until the winding up of the Company's affairs is completed, the business of the Company and the affairs of the Members, as such, shall continue to be governed by this Agreement.

(b) Control of Winding Up. The winding up of the Company shall be conducted under the direction of the Manager or such other Person as may be designated by a court of competent jurisdiction (herein sometimes referred to as the "Liquidator"); provided that any

Member whose breach of this Agreement shall have caused the dissolution of the Company (and the representatives appointed by such Member) shall not participate in the control of the winding up of the Company; and provided, further, that if the dissolution is caused by entry of a decree of judicial dissolution, the winding up shall be carried out in accordance with such decree.

(c) Manner of Winding Up. The Company shall engage in no further business following dissolution other than that necessary for the orderly winding up of business and distribution of assets. The Company's maintenance of offices shall not be deemed a continuation of business for purposes of this Section 13.3. Upon dissolution of the Company, the Liquidator shall, subject to Section 13.3(a), first attempt to distribute assets in kind if it can obtain the consent of each of the Members and, to the extent necessary, the creditors of the Company. If such consent is not obtained, the Liquidator shall sell the Company or all the Company's property in such manner and on such terms as it deems fit, consistent with its fiduciary responsibility and having due regard to the activity and condition of the relevant market and general financial and economic conditions. Each Member shall share Profits, Losses and other items after the dissolution of the Company and during the period of winding up in the same manner as described in ARTICLE 4.

(d) Application of Assets. Upon dissolution of the Company, the Company's assets (which shall, after the sale or sales referenced in Section 13.3(c), consist of the proceeds thereof) shall be applied as follows:

(i) Put Right. To NSM, to the extent the Put Right has been exercised pursuant to the terms of this Agreement and has not yet been satisfied. In order to provide NSM with sufficient time to exercise its Put Right in accordance with Section 8.1, under no circumstances shall the Company be dissolved within the ten-day period following the announcement of a Liquidation Event or a Deemed Liquidation Event.

(ii) ~~(i)~~ Creditors. To creditors for borrowed money and interest accrued thereon, including Members who are creditors, to the extent otherwise permitted by Applicable Law, in satisfaction of liabilities of the Company (whether by payment or the reasonable provision for the payment thereof). Any reserves set up by the Liquidator may be paid over by the Liquidator to an escrow agent or trustee, to be held in escrow or trust for the purpose of paying any such contingent or unforeseen liabilities or obligations, and, at the expiration of such period as the Liquidator may deem advisable, such reserves shall be distributed to the Members or their assigns in the manner set forth in ~~Section 13.3(d)(ii)~~ this Section 13.3(d).

(iii) Class A Members. To the Class A Members, first in respect of any unpaid distributions on the Class A Preferred Interests as of the Liquidation Event or Deemed Liquidation Event and second, in accordance with the Liquidation Preference of the Class A Preferred Interests.

(iv) ~~(ii)~~ Class B Members. ~~By To the end of the taxable year in which the liquidation occurs (or, if later, within ninety (90) days after the date of such liquidation); to the extent there are remaining funds available for distribution, to the Class B Members,~~ in proportion to the positive balances ~~of~~ in their respective Capital Accounts, as

determined after taking into account all Capital Account adjustments for the taxable year during which the ~~Liquidation~~Liquidation Event or Deemed Liquidation Event occurs (other than those made pursuant to this ~~Section 13.3(d)(ii)~~Section 13.3(d)(iv)).

(v) ~~(iii)~~–Incorporation. In the event the Company is incorporated in connection with an IPO or otherwise, each Member shall receive shares in the resulting corporation based on the amount it would receive in liquidation of the Company pursuant to ~~Section 13.3(d)(ii)~~Section 13.3(d)(iii) and Section 13.3(d)(iv).

(e) Deemed Liquidation Event. The Company shall not voluntarily effect a Deemed Liquidation Event unless the agreement or plan of merger or consolidation or other agreement for such transaction provides that the consideration payable to the Members shall be allocated among the Members in accordance with Section 13.3(d), and as if the consideration payable to the Members were all assets of the Company available for distribution to the Members.

(f) Amount Deemed Paid or Distributed. The amount of consideration paid by the Company upon a Liquidation Event or Deemed Liquidation Event shall be deemed to be the amount of the cash or the value of the property, rights or securities paid or distributed to the Members by the Company or the acquiring person, firm or other entity, with the value of such property, rights or securities determined in good faith by the Manager.

Section 13.4. Deficit Capital Accounts

If the Company is “liquidated” within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g), distributions shall be made pursuant to this ARTICLE 13 to the Members who have positive Capital Accounts in compliance with Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(2). No Member shall have an obligation to restore a negative Capital Account.

Section 13.5. Termination

Upon completion of the winding up of the Company and the distribution of all Company assets, the Company's affairs shall terminate and the Members shall cause to be executed and filed any and all documents required by the Act to effect the termination of the Company.

ARTICLE 14 MISCELLANEOUS

Section 14.1. Entire Agreement

This Agreement and the Related Agreements, together with any schedules and exhibits hereto and thereto, constitute the entire agreement and understanding of the Members and any of their affiliated entities with respect to the subject matter hereof and supersedes all prior and all contemporaneous oral or written negotiations, proposals, offers, agreements, commitments and understandings relating to such subject matters. Notwithstanding the foregoing, that certain Appeal Contingency Agreement dated as of October 1, 2015 by and among the parties hereto shall continue to apply, provided, however, that (i) any references therein to the “Credit Agreement” shall instead be references to the Senior Credit Facility effective as of the Effective

Date, (ii) any references therein to the LLC Agreement shall instead be references to this Agreement; and (iii) any references therein to the Interest Purchase Agreement shall instead be references to the Second Amended and Restated Interest Purchase Agreement effective as of June 7, 2018.

Section 14.2. Amendment; Waiver

Neither this Agreement nor any provision hereof may be amended, modified, or waived except in a writing signed by NSM and American II. No failure or delay of any Member in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce any such right or power, preclude any other further exercise thereof or the exercise of any other right or power. No waiver by any Member of any departure by any other Member from any provision of this Agreement shall be effective unless the same shall be in a writing signed by the Member against which enforcement of such waiver or consent is sought, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice or similar communication by any Member to another shall entitle such other Member to any other or further notice or similar communication in similar or other circumstances, except as specifically provided herein.

Section 14.3. Successors and Assigns

This Agreement may not be assigned without the prior written consent of all the parties hereto, which consent may be withheld in its sole and absolute discretion, and any assignment without such prior written consent shall be null and void and without force or effect; provided that, subject to ARTICLE 7, American II may assign its Interests and this Agreement in whole or in part (provided that American II shall not be relieved of its obligations under this Agreement, except as otherwise expressly set forth below) to (a) any Affiliate of American II and (b) secured lenders of American II or its Affiliates (as a collateral assignment). Any such assignment shall be subject to compliance with the requirements of all applicable FCC Rules. This Agreement shall be binding upon and shall inure to the benefit of the Members hereto and their respective heirs or successors in interest.

Section 14.4. No Third-Party Beneficiaries

This Agreement is entered into solely for the benefit of the Members, and no Person, other than the Members, their respective successors and permitted assigns, their Affiliates to the extent expressly provided herein, and (to the extent provided in ARTICLE 12) the Persons entitled to indemnification pursuant to ARTICLE 12, may exercise any right or enforce any obligation hereunder, and nothing herein expressed or implied will create or be construed to create any other third-party beneficiary rights hereunder.

Section 14.5. Disposition of Interests

Upon the sale or other disposition by a Person of all its Interests in the Company, following which such Person and Affiliate thereof is no longer a Member of the Company, this Agreement shall terminate as to such Member and its Affiliates, except as provided in Section 14.3 or Section 14.6.

Section 14.6. Survival of Rights and Duties

Termination of this Agreement for any reason, and any Member ceasing to be a Member or a party to this Agreement for any reason, shall not relieve any Member of any liability which at the time of termination or cessation has already accrued to such Member or which thereafter may accrue in respect of any act or omission prior to such termination or cessation, nor shall any such termination or cessation affect in any way the Related Agreements or the survival of any right, duty or obligation of any Member which is expressly stated elsewhere in this Agreement to survive termination or cessation hereof. The provisions of ARTICLE 8, Section 10.2, Section 10.3, ~~Section 11.4(a)~~[Section 11.4](#), ARTICLE 12, ARTICLE 13 and ARTICLE 14 shall survive any termination of this Agreement and any Member ceasing to be a Member or a party to this Agreement for any reason.

Section 14.7. Governing Law

This Agreement shall be construed in accordance with and governed by the internal laws of the State of Delaware applicable to agreements made and to be performed wholly within such jurisdiction, without regard to principles of conflicts of law provisions of that or of any other state, all rights and remedies being governed by said laws.

Section 14.8. Specific Performance

The Members acknowledge that money damages may not be an adequate remedy for violations of this Agreement and that any Member may, in its sole discretion, in an arbitration or a court of competent jurisdiction, to the extent permitted hereunder, apply for specific performance or injunctive or other relief as such arbitration or court may deem just and proper in order to enforce this Agreement or to prevent violation hereof. Each Member hereby irrevocably waives any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by a Member, as the case may be.

Section 14.9. Remedies Cumulative

All rights, powers and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity, unless otherwise specifically provided herein, shall not be mutually exclusive and shall be cumulative and not alternative, and the exercise or beginning of the exercise of any one or more right, power or remedy thereof by a Member shall not preclude the simultaneous or later exercise of any other such right, power or remedy by such Member hereunder or under Applicable Law or the principles of equity.

Section 14.10. Further Assurances

Each Member shall execute and deliver any such further documents and shall take such further actions as any other Member may at any time or times reasonably request, at the expense of the requesting Member, consistent with the provisions hereof in order to carry out and effect the intent and purposes of this Agreement.

Section 14.11. Expenses

Unless otherwise specifically agreed to in writing and except as set forth in this Section 14.11, the parties will bear their own costs and expenses (including all legal, accounting and investment expenses) incurred prior to the execution and delivery of the Original Agreement. Notwithstanding the foregoing, whether or not the Company acquires any licenses, (a) upon the filing with the FCC of the short-form application to participate in the Auction, American II shall pay or reimburse NSM for all of NSM's reasonable out-of-pocket expenses (including legal fees and expenses) incurred in connection with the transactions contemplated hereby (including any such expenses incurred prior to the date of the Original Agreement) and NSM's proposed participation in the Auction incurred up to such date, up to a maximum aggregate reimbursement of \$175,000 and (b) after such payment or reimbursement, American II shall reimburse NSM, from time to time within thirty (30) days of American II's receipt of a reasonably detailed invoice from NSM, for all of NSM's reasonable, documented out-of-pocket expenses (including legal fees and expenses) incurred in connection with the transactions contemplated hereby and NSM's proposed participation in the Auction incurred from and after the date on which such short-form application is filed with the FCC. In addition, the Company shall (or shall cause the License Company to) pay directly, or shall (or shall cause the License Company to) reimburse the Members for, the costs and expenses the Members incur (or have incurred) for the benefit of the Company or the License Company in connection with the License Company's participation in the Auction (*e.g.*, the cost of bidding facilities and related computer hardware and software); provided that the other Members receive documentation of such expenses in a form reasonably acceptable to such Members, and provided that NSM shall be solely responsible for the investment banking fees and expenses paid or payable to RBC Capital Markets, if any, pursuant to any arrangement entered into by NSM with RBC Capital Markets (it being understood that NSM has not entered into any such arrangement).

Section 14.12. Notices

All notices or requests that are required or permitted to be given pursuant to this Agreement shall be given in writing and shall be sent by facsimile transmission, or by first-class certified mail, postage prepaid, or by overnight courier service, charges prepaid, to the party to be notified, addressed to such party at the address(es) set forth below, or sent by facsimile to the fax number(s) set forth below, or such other address(es) or fax number(s) as such party may have substituted by written notice (given in accordance with this Section [14.12](#)) to the other party. The sending of such notice with confirmation of receipt of the complete transmission (in the case of facsimile transmission) or receipt of such notice (in the case of delivery by first-class certified mail or by overnight courier service) shall constitute the giving thereof.

~~ARTICLE 15-~~

REDACTED – FOR PUBLIC INSPECTION

If to be given to NSM or the Company:

c/o Doyon, Limited
Attn: Allen M. Todd, General Counsel

If by overnight courier service:

Doyon, Limited
1 Doyon Place, Suite 300
Fairbanks, AK 99701-2941

If by first-class certified mail:

Doyon, Limited
1 Doyon Place, Suite 300
Fairbanks, AK 99701-2941

If by facsimile:

Fax #: (907) 459-2075

cc: Lowenstein Sandler LLP
1251 Avenue of the Americas
New York, NY 10020
Attention: Michael A. Brosse
Fax: (973) 422-6841

If to be given to American II:

American AWS-3 Wireless II L.L.C.
Attn: EVP, Corporate Development

If by overnight courier service:

9601 South Meridian Blvd.
Englewood, Colorado 80112

If by first-class certified mail:

P.O. Box 6655
Englewood, Colorado 80155

If by facsimile:

Fax #: (303) 723-2020

cc: Office of the General Counsel
American AWS-3 Wireless II L.L.C.

If by overnight courier service:

Same address as noted above for American II overnight courier delivery

If by first-class certified mail:

Same address as noted above for American II first-class certified mail delivery

If by facsimile:

Fax #: (303) 723-2050

[Section 14.13.](#) ~~Section 15.1.~~ Severability

Subject to Section 14.14, each provision of this Agreement shall be construed as separable and divisible from every other provision and the enforceability of any one provision shall not limit the enforceability, in whole or in part, of any other provision. In the event that a court or administrative body of competent jurisdiction holds any provision of this Agreement to be invalid, illegal, void or less than fully enforceable as to time, scope or otherwise, the parties agree that such provision shall be construed by limiting and reducing it so that such provision is valid, legal, and fully enforceable while preserving to the greatest extent permissible the original

intent of the parties; the remaining terms and conditions of this Agreement shall not be affected by such alteration, and shall remain in full force and effect.

Section 14.14. ~~Section 15.2.~~ Reformation

(a) If the FCC should (i) change any FCC Rule in a manner that would adversely affect the enforceability of this Agreement; (ii) directly or indirectly reject or take action to challenge the enforceability of this Agreement or (iii) take any other steps whatsoever, on its own initiative or by petition from another Person, to challenge or deny the transactions contemplated hereby, or the eligibility of the License Company to hold any of the licenses won in the Auction or the ability of the License Company to realize the Auction Benefits (each, an “Adverse FCC Action”), then the Members shall promptly consult with each other and negotiate in good faith to reform and amend this Agreement so as to eliminate or amend to make unobjectionable any portion that is the subject of any Adverse FCC Action (each, an “Adverse FCC Action Reformation”). Furthermore, subject to consent in writing by American II, in the event of an Adverse FCC Action, the Members other than American II (the “Non-American II Members”) shall use their best efforts with respect to all aspects of the Adverse FCC Action to agree upon an Adverse FCC Action Reformation with American II; provided, however, that in the event that an element of any such Adverse FCC Action materially adversely impacts the material economic benefits of the Non-American II Members (each, an “Economic Element”), then the Non-American II Members may use commercially reasonable efforts solely with respect to the Economic Element of the Adverse FCC Action to agree upon an Adverse FCC Action Reformation with American II. None of the Members hereto shall take any action that is reasonably likely to contribute to such Adverse FCC Action.

(b) If the FCC should determine that a portion of this Agreement, after having been reformed pursuant to paragraph (a) above, continues to violate FCC Rules, then such provisions shall be null and void and the remainder of this Agreement shall continue in full force and effect, provided that the relative economic and other rights and benefits expected to be derived by the parties hereunder are preserved.

Section 14.15. ~~Section 15.3.~~ Relationship of Parties

Each Member shall perform services hereunder as an independent contractor and nothing herein shall be construed as creating any other relationship between the Members, except as expressly set forth herein. Except as specifically provided in this Agreement, nothing in this Agreement will constitute a Member as a legal representative or agent of the other Member, nor will a Member have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name of or on behalf of the other Member or hold itself out as agent for the other Member, unless otherwise expressly permitted by such other Member.

Section 14.16. ~~Section 15.4.~~ No Right to Partition

No Member shall have the right to bring an action for partition against the Company. Each of the Members hereby irrevocably waives any and all rights which it may have to maintain an action to partition Company property or to compel any sale or transfer thereof.

Section 14.17. ~~Section 15.5.~~ Construction

- (a) The singular includes the plural and the plural includes the singular.
- (b) A reference to Applicable Law includes any amendment or modification to such Applicable Law, and all regulations, rulings and other Applicable Law promulgated under such Applicable Law.
- (c) A reference to a Person includes its permitted successors and permitted assigns.
- (d) Accounting terms have the meanings assigned to them by GAAP, as applied by the accounting entity to which they refer.
- (e) The words “include,” “includes” and “including” are not limiting.
- (f) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.
- (g) A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document. In the event of any conflict between the provisions of this Agreement (exclusive of the Exhibits, Schedules, Annexes and Appendices thereto) and any Exhibit, Schedule, Annex or Appendix thereto, the provisions of this Agreement shall control.
- (h) References to any document, instrument or agreement (i) shall include all exhibits, schedules and other attachments thereto; (ii) shall include all documents, instruments or agreements issued or executed in replacement thereof and (iii) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, supplemented or otherwise modified from time to time and in effect at any given time.
- (i) The words “hereof,” “herein” and “hereunder” and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.
- (j) References to “days” shall mean calendar days, unless the term “Business Days” shall be used. References to a time of day shall mean such time in New York, New York, unless otherwise specified.
- (k) The word “will” shall be construed to have the same meaning and effect as the word “shall.”
- (l) Each of the parties hereto acknowledges that it has reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments hereto.

(m) All section and descriptive headings and the recitals herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement, and no construction or reference shall be derived therefrom.

[Section 14.18.](#) ~~Section 15.6.~~ Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument.

[END OF PAGE]
[SIGNATURE PAGE FOLLOWS]

**SIGNATURE PAGE TO THIRD AMENDED AND RESTATED LIMITED LIABILITY
COMPANY AGREEMENT OF NORTHSTAR SPECTRUM, LLC**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

MEMBERS:

AMERICAN AWS-3 WIRELESS II L.L.C.

By: _____
Name:
Title:

NORTHSTAR MANAGER, LLC

By: Doyon, Limited, its Manager

By: _____
Name:
Title:

COMPANY:

NORTHSTAR SPECTRUM, LLC

By: Northstar Manager, LLC, its Manager

By: Doyon, Limited, its Manager

By: _____
Name:
Title:

-

SCHEDULE I

~~This schedule will consist of the licenses in the 20 smallest markets (based on population) granted to the Company as a result of its participation in Auction No. 97.~~



SCHEDULE 11.3(a)(ii)

1. As documented in Letter from Mark F. Dever, Drinker Biddle & Reath, LLP, Counsel for Northstar Wireless, LLC, to Jean L. Kiddoo, Deputy Bureau Chief, Office of the Bureau Chief, Wireless Telecommunications Bureau, Federal Communications Commission, FCC ULS File No. 0006670613 (filed Oct. 1, 2015); Letter to Mark F. Dever, Counsel for Northstar Wireless, LLC, from Roger C. Sherman, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, 30 FCC Rcd 10700 (WTB rel. Oct. 1, 2015).

EXHIBIT A

INSTRUMENT OF ASSIGNMENT

INSTRUMENT OF ASSIGNMENT, dated as of _____, 20__, by and between NORTHSTAR SPECTRUM, LLC, a Delaware limited liability company ("Assignee"), and NORTHSTAR MANAGER, LLC, a Delaware limited liability company ("Assignor").

This Instrument of Assignment is being executed and delivered pursuant to Section 8.3 of the Third Amended and Restated Limited Liability Company Agreement of Assignee, dated as of ~~September 12~~June 7, 2014~~2018~~, by and between American AWS-3 Wireless II L.L.C. and Assignor (as such Agreement may have been or may be hereafter amended, modified, supplemented or amended and restated from time to time in accordance with its terms, the "LLC Agreement").

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth in the LLC Agreement, including the payment of the Put Price as of the date hereof, and other valuable consideration to Assignor, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows (capitalized terms used herein without definition herein having the meanings ascribed to them in the LLC Agreement):

1. Assignment. Assignor does hereby assign, convey, transfer and deliver (such assignment, conveyance, transfer and delivery being referred to herein as "Delivery") to Assignee, its successors and assigns all of its right, title and interest in and to, free and clear of Liens (other than restrictions imposed pursuant to the LLC Agreement or under any applicable securities laws and other than Liens under or pursuant to the Senior Credit Facility and the other Loan Documents (as defined therein)), its entire Interest in the Company.

2. Representations and Warranties. Assignor hereby represents and warrants to Assignee that, subject to the FCC Rules, Assignor (a) is the sole beneficial and record owner of the Interests being delivered by it hereby and has good and marketable title thereto, free and clear of all Liens (other than restrictions imposed pursuant to the LLC Agreement or under any applicable securities laws and other than Liens under or pursuant to the Senior Credit Facility and the other Loan Documents (as defined therein)) and (b) has full power and authority to deliver such Interests without conflict with the terms of any Applicable Law, order or material agreement or instrument binding upon it or its assets.

3. Further Assurances. Each of the parties agrees that at any time and from time to time upon the request of another party hereto, it shall execute and deliver such further documents and shall take such further actions as such other party may at any time or times reasonably request, at the expense of such requesting party, consistent with the provisions hereof in order to carry out and effect the intent and purposes of this Instrument of Assignment, and to vest in Assignee, and put Assignee in possession of, all the Interests and any portion thereof to be delivered hereunder.

4. Successors. This Instrument of Assignment is executed by, and shall be binding upon, Assignee and Assignor, and their respective successors and assigns.

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5. Counterparts. This Instrument of Assignment may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument.

6. Governing Law. This Instrument of Assignment shall be construed in accordance with and governed by the internal laws of the State of Delaware applicable to agreements made and to be performed wholly within such jurisdiction, without regard to principles of conflicts of law provisions of that or of any other state, all rights and remedies being governed by said laws.

IN WITNESS WHEREOF, the undersigned have caused this Instrument of Assignment to be executed as of the day and year first above written.

NORTHSTAR MANAGER, LLC

By: Doyon, Limited, its Manager

By: _____
Name:
Title:

NORTHSTAR SPECTRUM, LLC

By: Northstar Manager, LLC, its Manager
By: Doyon, Limited, its Manager

By: _____
Name:
Title:

=

REDACTED-FOR PUBLIC INSPECTION

ATTACHMENT 2

REDACTED – FOR PUBLIC INSPECTION

*Composite*Execution Copy
Incorporates Amendments No. 1 and 2

~~FIRST AMENDED AND RESTATED~~THIRD AMENDED AND RESTATED CREDIT
AGREEMENT
BY AND AMONG

AMERICAN AWS-3 WIRELESS II L.L.C.
(AS LENDER)

AND

NORTHSTAR WIRELESS, LLC
(AS BORROWER)

AND

NORTHSTAR SPECTRUM, LLC
(AS GUARANTOR)

Dated as of ~~October 13~~June 7, ~~2014~~2018

Execution

FIRSTTHIRD AMENDED AND RESTATED CREDIT AGREEMENT

This ~~First~~Third Amended and Restated Credit Agreement (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof, this “**Credit Agreement**”) is entered into as of ~~October 13~~June 7, 20142018 (the “**Effective Date**”), by and among AMERICAN AWS-3 WIRELESS II L.L.C., a Colorado limited liability company (solely in its capacity as lender hereunder, “**Lender**”), NORTHSTAR WIRELESS, LLC, a Delaware limited liability company (“**Borrower**”), as borrower, and NORTHSTAR SPECTRUM, LLC, a Delaware limited liability company (“**Guarantor**”), as guarantor.

RECITALS

WHEREAS, the FCC has announced that it will auction licenses to use spectrum in the 1695-1710 MHz and 1755-1780/2155-2180 MHz bands in an auction designated by the FCC as Auction Number 97 (the “**Auction**”) and that is currently scheduled by the FCC to begin on November 13, 2014, as the same may be rescheduled or modified by the FCC;

WHEREAS, through the Borrower, Lender desires to participate in the Auction together with Northstar Manager, LLC, a Delaware limited liability company (“**NSM**”), and NSM desires to participate in the Auction together with Lender;

WHEREAS, Borrower is a wholly-owned subsidiary of Guarantor;

WHEREAS, contemporaneously with the execution and delivery of this Credit Agreement, NSM, Lender and Guarantor have entered into the LLC Agreement (as defined below);

WHEREAS, NSM is the sole manager of Guarantor;

WHEREAS, it is the intention of the parties that, subject to the application of the FCC Rules, Borrower will be entitled to the Auction Benefits in the Auction as a result of NSM’s qualification as a “very small business” under the terms of the FCC Rules in effect on the initial application date of the Auction, including Sections 1.2110(b)(1) and 27.1106(a)(2) of the FCC Rules;

WHEREAS, the Auction Benefits are of substantial value to Borrower;

WHEREAS, in order to induce NSM to permit Lender to invest in Borrower through Guarantor and to enter the LLC Agreement, and in consideration therefor, Lender wishes to make and establish a line of credit for Borrower in the aggregate amount not to exceed the Loan Commitment Amount for the purposes of (i) Borrower participating as a bidder and obtaining Licenses in the Auction; (ii) facilitating the Build-Out and operation of the License Systems; and (iii) Borrower making certain limited distributions to Guarantor;

WHEREAS, it is a condition precedent to NSM entering into the LLC Agreement and participating in the Auction through Borrower that each of Lender and the Loan Parties executes and delivers this Credit Agreement; ~~and-~~

WHEREAS, as of September 12, 2014, Lender, Borrower, and Guarantor entered into a credit agreement relating to the matters set forth herein (“**Original Credit Agreement**”), ~~and,~~ which was amended and restated in that First Amended and Restated Credit Agreement dated as of October 13, 2014 (as amended prior to March 31, 2018, the “**First Amended Credit Agreement**”), which was further amended and restated in that Second Amended and Restated Credit Agreement effective as of March 31, 2018 (the “**Second Amended Credit Agreement**”);

WHEREAS, the FCC issued an order, *Northstar Wireless, LLC, SNR Wireless LicenseCo, LLC, Applications for New Licenses in the 1695-1710 MHz, 1755-1780 MHz and 2155-2180 MHz Bands*, Memorandum Opinion and Order, 30 FCC Rcd 8887 (2015), resulting in the denial of bidding credits to Borrower;

WHEREAS, the United States Court of Appeals for the District of Columbia Circuit in *SNR Wireless LicenseCo, LLC, et al. v. Federal Communications Commission*, 868 F.3d 1021 (D.C. Cir. 2017) affirmed the FCC’s decision, in part, and remanded the matter to the FCC to give Borrower an opportunity to seek to negotiate a cure of the issues identified by the FCC in its order;

WHEREAS, the FCC has stated that *Baker Creek Communications, LLC*, Memorandum Opinion and Order, 13 FCC Rcd 18709, 18715 (1998), sets forth an illustrative list of typical investor protections, which the Borrower and Lender adopted in the LLC Agreement;

WHEREAS, the Wireless Telecommunications Bureau of the FCC determined that the investor protections rights specified in the application of Advantage Spectrum, L.P. (ULS File No. 0006668843, granted July 5, 2016), did not preclude the grant of bidding credits to that Auction applicant; and the Borrower and Lender adopted materially similar contractual rights in the LLC Agreement;

WHEREAS, the FCC expressed concerns with certain limitations and repayment provisions in the Original Credit Agreement, and the parties hereto seek to amend the Second Amended Credit Agreement in response to those concerns; and

WHEREAS, pursuant to Section 8.7 of the ~~Original~~Second Amended Credit Agreement, Lender, Borrower, and Guarantor wish to amend and restate the ~~Original~~Second Amended Credit Agreement to read as set forth herein;

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

Section 1. Defined Terms and Rules of Interpretation

1.1 Definitions. The following terms shall have the following meanings in this Credit Agreement:

“**Acquisition Sub-Limit**” shall mean the dollar amount equal to the sum of (a) the net purchase price of all Licenses for which Borrower is the Winning Bidder in the Auction minus the amount of all capital contributions made by the Guarantor to the Borrower for the purpose of making payments to the FCC, plus (b) all amounts needed by Borrower to make any net bid withdrawal payments pursuant to Section 2.2(a)(ii), which shall be used solely to participate in the Auction and to pay the net winning bids for licenses for which Borrower is the Winning Bidder, including to make any required deposits or down payments to the FCC in connection therewith, and to make any such net bid withdrawal payments, plus (c) \$69,055,200 (the “**Additional FCC Amount**”) which amount, together with the amount of the gross winning bids for those specific Licenses for which Borrower is the Winning Bidder and with respect to which Borrower will not be paying the gross winning bid amounts and with respect to which Borrower therefore understands that it will be deemed to have defaulted, pursuant to the letters exchanged between Borrower and the FCC Wireless Bureau, is equal to \$1,961,264,850 plus the \$333,919,350 additional payment due to the FCC in connection with such default pursuant to 47 C.F.R. §1.2104(g)(2)(ii) (calculated on an interim basis), plus (d) such amounts due to the FCC pursuant to 47 C.F.R. §1.2104(g)(2)(i) as deficiency payments in connection with such default (with respect to clause (d) only, each an “**FCC Deficiency Payment**”) less any over-payment of the additional payments described in clause (c) and less any Transferred License Deficiency Payment ~~(as defined below)~~.

“**Additional FCC Amount**” shall have the meaning set forth in the definition of “Acquisition Sub-Limit”.

“**Adverse FCC Action**” shall have the meaning set forth in Section 8.12(a).

“**Adverse FCC Action Reformation**” shall have the meaning set forth in Section 8.12(a).

“**Affiliate**” shall mean, with respect to a Person, any other Person that either directly or indirectly through one or more intermediaries Controls, is Controlled by or is under common Control with such Person at any time during the period for which the determination of affiliation is being made; provided, however, that for purposes of this Credit Agreement, EchoStar Corporation and EchoStar Corporation’s direct and indirect subsidiaries will not be considered or deemed to be Affiliates of Lender. For the avoidance of doubt, for purposes of this Credit Agreement, Lender is not an Affiliate of the Borrower or Guarantor.

~~“**Amortization Commencement Date**” shall mean the date sixty days following the fifth anniversary of the last Initial Grant Date (as defined in the LLC Agreement); provided, however, that if NSM exercises its Put Right (as defined in the LLC Agreement) in accordance with the terms of the LLC Agreement prior to such date and has not been paid in full the Put Price (as defined in the LLC Agreement) in connection therewith, then the Amortization Commencement~~

~~Date shall be extended to the first Business Day following the date on which the NSM Members have been paid in full the Put Price.~~

“Applicable Law” shall mean with respect to any Person, any federal, state, local or foreign law, statute, ordinance, rule, regulation, Judgment, order, injunction or decree or any interpretation or administration of any of the foregoing by, any Governmental Authority, whether in effect as of the Effective Date or thereafter, and in each case as amended, applicable to such Person or its Affiliates or their respective assets, including the FCC Rules.

“Auction” shall have the meaning set forth in the recitals hereto.

“Auction Benefits” means the eligibility of ~~the License Company~~Borrower and its Subsidiaries to hold any of the licenses for which ~~the License Company~~Borrower is the Winning Bidder in the Auction and the ability of ~~the License Company~~Borrower and each of its Subsidiaries to realize the twenty five percent (25%) Bidding Credits that it derives from its status as a Qualified Person without the payment of unjust enrichment penalties with respect to such Bidding Credits.

~~**“Auction Date”** shall mean the date on which the first round of bidding in the Auction commences.~~

“Auction Funds” shall mean funds paid by the Borrower to the FCC in accordance with FCC Rules (a) to become eligible to participate in the Auction; (b) as a down payment or winning bid payment for any license for which Borrower is the Winning Bidder ~~or;~~ (c) as an Auction related bid withdrawal payment; or (d) as an Auction related bid default payment, including but not limited to the Interim Default Payment.

“Balance Amount” shall have the meaning set forth in Section 2.2(a)(iii).

“Bidding Credit” means, with respect to any license for which Borrower was the Winning Bidder in the Auction, an amount equal to the excess of the gross winning bid placed in the Auction by Borrower for such license over the net winning bid placed in the Auction by Borrower for such license.

“Bidding Protocol” shall mean the Bidding Protocol and Joint Bidding Arrangement, dated as of September 12, 2014 (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with its terms), by and among Doyon, Limited, NSM, Lender, Guarantor, Borrower, and, for purposes of Sections 4 and 5 thereof only, American AWS-3 Wireless I L.L.C.

“Borrower” shall have the meaning set forth in the preamble hereto.

“Borrower Change in Control Event” shall be deemed to have occurred if (a) there shall be consummated (i) any consolidation or merger of Borrower in which Borrower is not the continuing or surviving entity, other than a merger of Borrower in which the holders of the equity securities of Borrower immediately prior to such merger have the same proportionate ownership of the voting equity securities of the surviving entity immediately after the merger or (ii) any sale, lease, exchange or other transfer (in one transaction or a series of related

transactions) of all, or substantially all, of the assets of Borrower; (b) the member(s) of Borrower approve any plan or proposal for the liquidation or dissolution of Borrower; or (c) Borrower ceases to be a wholly-owned Subsidiary of Guarantor.

“Borrower Material Adverse Effect” shall mean a material adverse effect on the business, properties, assets, liabilities, prospects, or condition (financial or otherwise) of Borrower and the Borrower Subsidiaries, taken as a whole, except for any such effects resulting directly or indirectly from (a) changes in the broadband industry generally; (b) changes in general economic conditions or the financial, banking or securities markets generally (including any disruption thereof and any decline in the price of any security or any market index); (c) any act of war, armed hostilities or terrorism, or the escalation of hostilities; (d) changes in GAAP or its application; (e) changes in Applicable Law (including the FCC Rules) affecting the broadband industry generally; and (f) the failure to satisfy the requirements of 47 C.F.R. Section 27.14(s)(1) with respect to any or all of the Licenses; provided, that such failure is caused solely by a direct action or omission of Lender or one or more of its Subsidiaries or Affiliates (whether as Lender, ~~management company under the Management Agreement~~ or otherwise).

“Borrower Obligations” shall mean the collective reference to the payment and performance by Borrower of each covenant and agreement of Borrower contained in this Credit Agreement and the other Loan Documents to which Borrower is a party or by which it is bound.

“Borrower Subsidiary” shall mean each Subsidiary of Borrower, each of which shall be a Delaware limited liability company (unless otherwise consented to by Lender) and shall be wholly owned by Borrower.

“Build-Out” shall mean the construction and associated operation by Borrower and the Borrower Subsidiaries of a fixed or mobile wireless system using the spectrum authorized for use under the Licenses in accordance with the technical parameters set forth in the FCC Rules.

“Build-Out Loan Request” shall have the meaning set forth in Section 2.2(b)(i).

“Build-Out Sub-Limit” shall mean, on and after the Effective Date, an amount equal to [REDACTED] plus, from time to time, such additional amounts as are required to fund Working Capital requirements, plus such additional amounts as Borrower and Lender mutually agree are necessary to meet the Borrower’s and its Subsidiaries’ Build-Out plans, which shall be used by Borrower to fund the Build-Out and initial operation of the License Systems, including payment of management or similar fees (whether by Borrower, Guarantor or any of their Subsidiaries), if any, to NSM ~~and Lender~~, and to fund other Working Capital requirements of Borrower and Guarantor consistent with the annual business plan and budget adopted and modified from time to time in accordance with the LLC Agreement.

“Business” shall have the meaning given to that term in the LLC Agreement.

“Business Day” shall mean any day other than Saturday, Sunday, or other day on which commercial banks in New York, New York are authorized or required to close under the laws of the State of New York.

“Claims” shall have the meaning set forth in Section 8.4.

“**Commitment Period**” shall mean the period commencing on the Effective Date and expiring on the earliest to occur of (a) the Maturity Date; (b) the date that the LLC Agreement is terminated by either party pursuant to Section 13.1(b) of the LLC Agreement; (c) the date ~~on which the Management Agreement has been terminated (following the expiration of the applicable notice period) by Lender pursuant to Section 10.2(b) thereof (other than Section 10.2(b)(iv));~~ (d) ~~the date~~ that is one hundred eighty (180) days after the date on which the Borrower or any Borrower Subsidiary enters into any contract or agreement pursuant to which any direct competitor of Lender or any entity in which any direct competitor of Lender owns, directly or indirectly, an interest in excess of twenty percent (20%), is engaged to provide management or material technical services to the Borrower or any Borrower Subsidiary ~~in the nature of those provided by Lender under the Management Agreement;~~ (e) the date that is one hundred eighty (180) days after the date on which neither Lender nor any of its Affiliates is a limited liability company member of Guarantor (provided that Lender and its Affiliates have complied with the requirements of Section 7.1(a) of the LLC Agreement) or (f) the Mandatory Prepayment Date.

“**Consolidated Net Income**” shall have the meaning set forth in Section 6.166.15(b)(i).

“**Control**” (including the correlative meanings of the terms “**Controlled by**,” “**Controlling**” and “**under Common Control with**”) as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of such Person, whether through the ownership of Voting Securities, by contract or otherwise.

“**Control Agreement**” shall mean such agreements, instruments or other documents that Lender shall reasonably request (subject to the terms and conditions of the Intercreditor and Subordination Agreement) from time to time from any of Guarantor, Borrower or any of Borrower’s Subsidiaries granting Lender “control” (as such term is used in Section 9-104 of the Uniform Commercial Code of the State of Delaware) in order to perfect, to ensure the continued perfection of, and to protect the assignment and security interest granted or intended to be granted in any deposit or securities accounts of Guarantor, Borrower or any Borrower Subsidiaries or such other deposit or securities accounts in which Guarantor, Borrower or any Borrower Subsidiaries may have an interest.

“**Credit Agreement**” shall have the meaning set forth in the preamble hereto.

“~~Default Rate~~DISH” shall have the meaning set forth in Section 2.32.2(fa)(iv).

“**Down Payment Amount**” shall have the meaning set forth in Section 2.2(a)(ii).

“**Down Payment Date**” shall have the meaning set forth in Section 2.2(a)(ii).

“**Economic Element**” shall have the meaning set forth in Section 8.12(a).

“**Effective Date**” shall have the meaning set forth in the preamble hereto.

“**Equity Interests**” means capital stock, partnership interests, limited liability company interests or other ownership or beneficial interests of any Person.

“**Event of Default**” shall have the meaning set forth in Section 7.1.

“**Excess Cash**” shall mean, for any period, the sum of all cash and cash equivalents held by Guarantor, Borrower and any of its Subsidiaries at the time of determination in excess of such amount required (as determined in good faith by Borrower) for Guarantor, Borrower and the Borrower Subsidiaries to satisfy the then current liabilities of Guarantor, Borrower and the Borrower Subsidiaries and provide a reasonable reserve for the future liabilities (including obligations to make distributions pursuant to Section 3.1 ~~(b)~~ and Section 3.2 of the LLC Agreement) and then current and future operating expenses and capital expenditures of Guarantor, Borrower and the Borrower Subsidiaries.

“**FCC**” shall mean the Federal Communications Commission or any successor agency or entity performing substantially the same functions.

“**FCC Deficiency Payment**” shall have the meaning set forth in the definition of “Acquisition Sub-Limit”.

“**FCC Deficiency Payment Amount Loan**” shall have the meaning set forth in Section 2.2(a)(v).

“**FCC Rules**” shall mean the Communications Act of 1934, as amended by, *inter alia*, the Telecommunications Act of 1996, codified at 47 U.S.C. § 151 *et seq.*, as it may be amended in the future, including the rules and regulations established by the FCC and codified in Title 47 of the Code of Federal Regulations, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time hereafter, and effective orders, rulings, and public notices of the FCC.

~~“**Final Principal Amount**” shall have the meaning set forth in Section 2.3(e).~~

“**Financing Statements**” shall mean such UCC financing statements and other instruments reasonably required by Lender to create, perfect and/or maintain the security interests granted by the Loan Parties under the Pledge Agreement and the Security Agreement.

“**First Amended Credit Agreement**” shall have the meaning set forth in the preamble hereto.

“**Funding Date**” shall mean each date on which Lender makes a Loan to Borrower.

“**GAAP**” means generally accepted accounting principles as used in the United States by the Financial Accounting Standards Board and/or the American Institute of Certified Public Accountants, as in effect from time to time.

“**Governmental Authority**” shall mean any government or political subdivision thereof, whether domestic or foreign, including any national, state, regional, provincial, county, city, municipal, local or other governmental department, ministry, commission, board, bureau, agency, regulatory body or authority, instrumentality, judicial or administrative body, having jurisdiction over the matter or matters in question, including the FCC.

“Guarantor” shall have the meaning set forth in the preamble hereto.

“Guarantor Change in Control Event” shall be deemed to have occurred if (a) there shall be consummated (i) any consolidation or merger of Guarantor in which Guarantor is not the continuing or surviving entity, other than a merger of Guarantor in which the holders of the voting equity securities of Guarantor immediately prior to the merger have the same proportionate ownership of the voting equity securities of the surviving entity immediately after the merger or (ii) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all, or substantially all, of the assets of Guarantor or (b) the member(s) of Guarantor approve any plan or proposal for the liquidation or dissolution of Guarantor.

“Guarantor Material Adverse Effect” shall mean a material adverse effect on the business, properties, assets, liabilities, prospects, or condition (financial or otherwise) of Guarantor and its Subsidiaries, taken as a whole, except for any such effects resulting directly or indirectly from (a) changes in the broadband industry generally; (b) changes in general economic conditions or the financial, banking or securities markets generally (including any disruption thereof and any decline in the price of any security or any market index); (c) any act of war, armed hostilities or terrorism, or the escalation of hostilities; (d) changes in GAAP or its application; and (e) changes in Applicable Law (including the FCC Rules) generally affecting the broadband industry.

“Guarantor Obligations” means all liabilities and obligations of Guarantor that may arise under or in connection with this Credit Agreement (including under Section 3) and the other Loan Documents to which it is a party or by which it is bound, whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses and otherwise.

“Guaranty” shall have the meaning set forth in Section 2.2(a)(iv).

“Initial Application Date” means September 12, 2014.

“Initial Loan Amount” shall have the meaning set forth in Section 2.2(a)(i).

“Initial Loan Date” shall have the meaning set forth in Section 2.2(a)(i).

“Intercreditor and Subordination Agreement” shall mean the Intercreditor and Subordination Agreement, dated as of ~~the date of the Original Credit Agreement~~ September 12, 2014, by and between Lender and NSM, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“Interest Purchase Agreement” shall mean the Second Amended and Restated Interest Purchase Agreement, ~~dated as of the date of the Original Credit Agreement~~ effective as of June 7, 2018, by and among NSM, Guarantor, Borrower and Lender, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof.

“Interim Default Payment” shall mean Borrower’s payment of \$333,919,350 to the FCC in connection with bids made pursuant to the Auction.

“Judgment” shall mean any judgment, writ, order, injunction, award or decree of any court, judge, justice or magistrate, including any bankruptcy court, or arbiter, and any order of or by any other Governmental Authority.

“Lender” shall have the meaning set forth in the preamble hereto.

“License” shall mean any license (a) issued by the FCC to the Borrower for which Borrower is a Winning Bidder in the Auction or (b) any other license issued by the FCC (i) now to the Borrower or a Borrower Subsidiary or (ii) hereafter held by Borrower or a Borrower Subsidiary.

“License System” shall mean the fixed or mobile wireless system(s) licensed to, constructed and operated, or to be constructed and operated, by the Borrower and/or any Borrower Subsidiaries for the purpose of providing service authorized under a License or Licenses in each of the Markets.

“Litigation” shall mean any claim, action, suit, proceeding, arbitration, investigation, hearing or other activity or procedure that could result in a Judgment, and any notice of any of the foregoing.

“LLC Agreement” shall mean the ~~First~~Third Amended and Restated Limited Liability Company Agreement of Northstar Spectrum, LLC, a Delaware limited liability company, by and between Lender and NSM, ~~dated~~effective as of the Effective Date, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“Loan Commitment Amount” shall mean the aggregate sum of (a) the Acquisition Sub-Limit and (b) the Build-Out Sub-Limit.

“Loan Documents” shall mean this Credit Agreement, the Note, the Security Agreement, the Pledge Agreement, the Control Agreement(s), the Intercreditor and Subordination Agreement, and all other agreements, instruments, certificates and other documents at any time executed and delivered pursuant to or in connection herewith or therewith, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time after the Effective Date in accordance with terms hereof and thereof. For the avoidance of doubt, the Loan Documents shall not include the LLC Agreement, ~~the Management Agreement, the Trademark License Agreement~~ or any agreement, instrument, certificate or other document at any time executed and delivered pursuant to or in connection with the LLC ~~Agreement, the Management Agreement or the Trademark License~~ Agreement, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time after the Effective Date in accordance with the terms thereof.

“Loan Parties” shall mean Borrower, Guarantor and, upon its respective formation, each Borrower Subsidiary.

“Loans” shall mean the loans to Borrower evidenced by the Note, not to exceed in the aggregate the Loan Commitment Amount. Each advance made under the Note is a Loan.

~~“Management Agreement” shall mean the Management Services Agreement, dated as of the date of the Original Credit Agreement, by and between the Borrower and the Management Company, as the same may be amended, modified, supplemented or amended and restated from time to time in accordance therewith.~~

~~“Management Company” means the Management Company under the Management Agreement, which initially is Lender.~~

“Mandatory Prepayment Date” shall mean the date on which Borrower receives a refund of Auction Funds (less any amounts retained by the FCC) because (a) Borrower is not the Winning Bidder for any Licenses or (b) Borrower is the Winning Bidder for a License or Licenses and the FCC does not grant at least one such License to Borrower.

“Markets” shall mean the geographic area(s) in which Borrower or any of the Borrower Subsidiaries is authorized by the FCC to provide fixed or mobile wireless services.

“Maturity Date” shall mean the ~~date that is sixty days following the seventh~~tenth anniversary of the ~~last~~ Initial Grant Date (as defined in the LLC Agreement).

“Member(s)” shall have the meaning given to the term in the LLC Agreement.

“Moody’s” shall have the meaning set forth in Section 6.10.

“Non-American II Members” shall have the meaning set forth in Section 8.12(a).

“Note” shall mean that certain second amended and restated promissory note in the form attached hereto as Exhibit B, executed by Borrower in favor of Lender and delivered by Borrower to Lender in accordance with the terms of this Credit Agreement.

“NSM” shall have the meaning set forth in the recitals hereto.

“NSM Lien” shall mean the liens and security interests in favor of NSM granted by Borrower and the Borrower Subsidiaries pursuant to the NSM Security Agreement and by Borrower pursuant to the NSM Pledge Agreement, in each case, to secure the obligations of Borrower under the Interest Purchase Agreement.

“NSM Pledge Agreement” shall mean that certain pledge agreement, dated as of ~~the date of the Original Credit Agreement,~~September 12, 2014, executed by Borrower in favor of NSM, pursuant to which Borrower shall pledge to NSM all of the Borrower’s membership interests in all of the Borrower Subsidiaries holding Licenses, in each case to secure the obligations of Borrower under the Interest Purchase Agreement to the extent set forth in the NSM Pledge Agreement, as such agreement may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“NSM Security Agreement” shall mean the security agreement, dated as of ~~the date of the Original Credit Agreement,~~September 12, 2014, executed by Borrower in favor of NSM, and each Supplement to Security Agreement executed after the Effective Date by a Subsidiary of Borrower, in each case to secure the obligations under the Interest Purchase Agreement or

guarantees thereof to the extent set forth in the NSM Security Agreement, as such agreement may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“NSM Security Documents” shall mean the NSM Security Agreement and the NSM Pledge Agreement.

“Permitted Disposition” means a disposition of the assets of Borrower or any Borrower Subsidiary pursuant to (a) the NSM Security Agreement; (b) the NSM Pledge Agreement or (c) the Interest Purchase Agreement and any guarantees relating thereto, and in accordance with the terms and provisions of such agreements and (x) Section 6.3 of the LLC Agreement and (y) the Intercreditor and Subordination Agreement.

“Permitted Distribution” means (a) payments made pursuant to and in accordance with the terms and provisions of (i) Section 3.1(b) of the LLC Agreement, (ii) Section 3.3.2 of the LLC Agreement, (iii) Section 3.4 of the LLC Agreement or ~~(iiiiv)~~ Section 8.4 of the LLC Agreement (including, in each case, distributions by Borrower or its Subsidiaries to Guarantor to enable Guarantor to make such Permitted Distributions) or (b) payments to NSM in exchange for membership interests in Guarantor pursuant to the provisions of the Interest Purchase Agreement or the NSM Security Documents (including distributions by Borrower or its Subsidiaries to Guarantor to enable Guarantor to make such Permitted Distributions).

“Permitted Liens” shall mean (a) any and all liens and security interests created pursuant to any of the Loan Documents or pursuant to the NSM Security Documents; (b) liens for taxes, fees, assessments and governmental charges or levies not delinquent or that are being contested in good faith by appropriate proceedings; provided, however, that Borrower and the Borrower Subsidiaries shall have set aside on their books and shall maintain adequate reserves for the payment of same in conformity with GAAP; (c) liens, deposits or pledges made to secure statutory obligations, surety or appeal bonds, or bonds for the release of attachments or for stay of execution, or to secure the performance of bids, tenders, contracts (other than for the payment of borrowed money), leases or for purposes of like general nature in the ordinary course of business (including landlords’, carriers’, warehousemen’s, mechanics’, workers’, suppliers’, materialmen’s, or repairmen’s liens) that do not exceed Thirty-Seven Million Five Hundred Thousand Dollars (\$37,500,000) in the aggregate at any time outstanding; (d) purchase money liens on tangible personal property in the nature of office equipment utilized in the normal operation of the business of Borrower, which liens encumber only the equipment acquired with such indebtedness; (e) liens for indebtedness permitted under the terms of Section 6.9(b), which liens encumber only the equipment acquired with such purchase money indebtedness; ~~and~~; (f) other liens securing obligations of the Borrower and the Borrower Subsidiaries in an aggregate amount not to exceed Five Million and No Dollars (\$5,000,000) at any time outstanding; and (g) liens securing obligations of the Borrower and the Borrower Subsidiaries which by their express terms are subordinate to the Loans.

“Person” shall mean any individual, corporation, partnership, firm, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, estate, incorporated or unincorporated organization, Governmental Authority or other entity.

“Pledge Agreement” shall mean the Pledge Agreement in substantially the form attached hereto as Exhibit A pursuant to which Guarantor and Borrower shall pledge to Lender all of each such person’s membership interests in all of its Subsidiaries as security for the Obligations, as any of the same may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with their terms.

~~“POPs” shall have the meaning commonly given to such term in the United States telecommunications industry and shall be based on 2013 population statistics provided by Claritas, Inc.~~

“Qualified Person” means a Person that qualifies as a “very small business” under the terms of FCC Rules applicable to the Auction in effect on the Initial Application Date, including but not limited to Sections 1.2110(b)(1) and 27.1106(a)(2) of the FCC Rules in effect on the Initial Application Date.

“Refund” shall mean any Auction Funds that are refunded to Borrower or any Borrower Subsidiary.

“Refund Date” shall mean, for each Refund, the date on which Borrower or a Borrower Subsidiary receives such Refund.

“Remaining FCC Deficiency Payment Amount Loan” shall have the meaning set forth in Section 2.2(a)(vi).

“Remaining Licenses” shall have the meaning set forth in Section 2.2(a)(v).

“Required Capital Contributions” shall mean the capital contributions required to be made to Guarantor (and by Guarantor to Borrower) by NSM and Lender pursuant to the LLC Agreement.

“S&P” shall have the meaning set forth in Section 6.10.

“Security Agreement” shall mean the Security Agreement in substantially the form attached hereto as Exhibit C pursuant to which Guarantor, Borrower and each Borrower Subsidiary shall grant to Lender a lien and security interest in and to all of each such person’s personal property, fixtures and owned real property as security for the Borrower Obligations, as any of the same may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with their terms.

“Subsidiary” of any Person shall mean any other Person with respect to which either (a) more than fifty percent (50%) of the interests having ordinary voting power to elect a majority of the directors or individuals having similar functions of such other Person (irrespective of whether at the time interests of any other class or classes of such Person shall or might have voting power upon the occurrence of any contingency) or (b) more than fifty percent (50%) of the Equity Interests of such other Person is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person's other Subsidiaries.

~~“Trademark License Agreement” shall mean the Trademark License Agreement between the Borrower and DISH Network L.L.C. of even date with the Original Credit Agreement, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with its terms.~~

“Transferee” shall have the meaning set forth in Section 2.2(a)(vi).

“Transferred License Deficiency Payment” shall have the meaning set forth in Section 2.2(a)(vi).

“Voting Securities” means Equity Interests of a Person having the right to vote generally in the election of the directors (or persons performing equivalent functions) of such Person.

“Winning Bidder” shall mean a Person who is the winning bidder in the Auction for a License offered by the FCC therein (a) as set forth in the FCC’s post-Auction public notice identifying Auction winning bidders or (b) by virtue of having accepted the FCC’s offer of a License for the amount of its final Auction net bid therefore following the default of the winning bidder for that License described in clause (a) of this definition; provided, that, for purposes of this Agreement, Borrower shall be deemed to not have been the winning bidder for the licenses in respect of which Borrower did not pay the gross winning bid amounts (as more fully described in that letter dated October 1, 2015 from Mark F. Dever (then of Drinker Biddle & Reath LLP) to Jean L. Kiddoo, Deputy Bureau Chief, Office of the Bureau Chief, Wireless Telecommunications Bureau of the FCC, and set forth on Attachment 2 to such letter).

“Winning Bidder Balance Amount Loan” shall have the meaning set forth in Section 2.2(a)(iii).

“Working Capital” shall mean a reasonable amount of working capital (including the payment of all fees and expenses and including the payment of tax distributions to the Members under Section 3.1(b) of the LLC Agreement) for Guarantor, Borrower and the Borrower Subsidiaries, as determined in accordance with the annual budget of Guarantor, Borrower and the Borrower Subsidiaries, which budget shall be adopted and modified from time to time in accordance with the LLC Agreement.

1.2 Construction.

a. The singular includes the plural and the plural includes the singular.

b. A reference to Applicable Law includes any amendment or modification to such Applicable Law, and all regulations, rulings and other Applicable Law promulgated under such Applicable Law.

c. A reference to a Person includes its permitted successors and permitted assigns.

d. Accounting terms have the meanings assigned to them by GAAP, as applied by the accounting entity to which they refer.

e. The words “include,” “includes” and “including” are not limiting.

f. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

g. A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document. In the event of any conflict between the provisions of this Credit Agreement (exclusive of the Exhibits, Schedules, Annexes and Appendices thereto) and any Exhibit, Schedule, Annex or Appendix thereto, the provisions of this Credit Agreement shall control.

h. References to any document, instrument or agreement (i) shall include all exhibits, schedules and other attachments thereto; (ii) shall include all documents, instruments or agreements issued or executed in replacement thereof and (iii) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, supplemented or otherwise modified from time to time and in effect at any given time.

i. The words “hereof,” “herein” and “hereunder” and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.

j. References to “days” shall mean calendar days, unless the term “Business Days” shall be used. References to a time of day shall mean such time in New York, New York, unless otherwise specified.

k. The word “will” shall be construed to have the same meaning and effect as the word “shall.”

l. Each of the parties hereto acknowledges that it has reviewed this Credit Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Credit Agreement or any amendments hereto.

m. All section and descriptive headings and the recitals herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Credit Agreement, and no construction or reference shall be derived therefrom.

n. If, at any time after the Effective Date, Alfred M. Best Company, Inc., Moody’s or S&P shall change its respective system of classifications, then any Alfred M. Best Company, Inc., Moody’s or S&P “rating” referred to herein shall be considered to be at or above a specified level if it is at or above the new rating which most closely corresponds to the specified level under the old rating system.

o. The Loan Documents are the result of negotiations among, and have been reviewed by each of, Borrower, Guarantor, Lender and their respective counsel. Accordingly, the Loan Documents shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favor of or against Borrower, Guarantor or Lender solely as a result of any such party having drafted or proposed the ambiguous provision.

Section 2. Terms of Loan

2.1 The Loans.

Subject to the terms and conditions and in reliance upon the representations and warranties set forth in this Credit Agreement, Lender agrees to make Loans to Borrower from time to time during the Commitment Period in an aggregate principal amount not to exceed at any time the Loan Commitment Amount; provided, however, Lender shall have no obligation to make any Loans if NSM, either directly or through Guarantor (but not the Bidding Manager (as defined in the Bidding Protocol) acting on its own volition or in accordance with the Bidding Protocol), causes Borrower to bid on a license that was not a Target License (as defined in the Bidding Protocol) as set forth in the Bidding Protocol or causes Borrower to purchase a Targeted License by bidding materially in excess of the established bid limits for such license, in each case, without the prior written consent (which may be delivered by electronic mail, facsimile transmission or otherwise) of Lender or of Lender under the Bidding Protocol (which consent shall be deemed given by Lender if the member of the Auction Committee (as defined in the Bidding Protocol) appointed by Lender has approved thereof).

2.2 Procedure for Borrowing.

a. Subject to the terms and conditions and in reliance upon the representations and warranties set forth in this Credit Agreement, Lender shall make the following Loans to Borrower in accordance with the following schedule:

(i) On October 15, 2014 (the “**Initial Loan Date**”), Lender made a Loan to Borrower in the amount of Four Hundred Thirty One Million Eight Hundred Thousand and No Dollars (\$431,800,000.00) (such Loan amount, the “**Initial Loan Amount**”), via direct payment to the FCC on behalf of the Borrower in accordance with FCC Rules enabling Borrower to become eligible to participate in the Auction.

(ii) ~~In the event that Borrower is a Winning Bidder, then on~~On the date that ~~is was~~is was two (2) Business Days prior to the date (the “**Down Payment Date**”) on which Borrower ~~is was~~is was required to submit sufficient funds to bring its total amount of money on deposit with the FCC to twenty percent (20%) of the aggregate amount of Borrower’s net winning bids (the “**Down Payment Amount**”), Lender ~~shall make~~made a Loan to Borrower in an amount equal to the following formula (to the extent such sum ~~is was~~is was greater than zero): (A) the Down Payment Amount, plus (B) the aggregate amount of any bid withdrawal payment obligations incurred by Borrower in the Auction, less (C) the Required Capital Contributions, less (D) the Initial Loan Amount. ~~Borrower shall use the entire proceeds of the foregoing Loan (if any) and the Required Capital Contributions to timely pay the Down Payment Amount to the FCC in accordance with FCC Rules, via direct payment to the FCC on behalf of the Borrower.~~

(iii) ~~In the event that Borrower is a Winning Bidder, then on~~ On the date that ~~is was~~ two (2) Business Days prior to the date on which Borrower ~~shall be was~~ required to submit the then remaining balance of the aggregate amount of its net winning bids to the FCC (the “**Balance Amount**”), Lender ~~shall make made~~ a Loan to Borrower in an amount equal to the following formula (to the extent such amount ~~is was~~ greater than zero): (A) the Balance Amount, ~~less~~ (B) the Required Capital Contributions to the extent that the Required Capital Contributions were not expended in full in making the payment set forth in Section 2.2(a)(ii) (the “**Winning Bidder Balance Amount Loan**”). ~~Borrower shall use the proceeds of the Winning Bidder Balance Amount Loan, if any, and any remaining Required Capital Contributions to timely pay the Balance Amount to the FCC in accordance with FCC Rules. Lender may make the Winning Bidder Balance Amount Loan,~~ via direct payment to the FCC on behalf of the Borrower.

(iv) On the date on which Borrower is required to submit such Additional FCC Amount to the FCC, Lender or DISH Network Corporation (“**DISH**”) (solely in the event that DISH is obligated to pay the Additional FCC Amount pursuant to the Guaranty made by DISH in favor of the FCC on October 1, 2015 (the “**Guaranty**”)) shall transfer immediately available funds, directly to the FCC in a principal amount equal to the Additional FCC Amount, which will be deemed to be a Loan by Lender to Borrower in a principal amount equal to the Additional FCC Amount.

(v) In the event that: (a) an FCC Deficiency Payment is due and owing to the FCC; and (b) as of the date such payment is due and owing to the FCC, neither Borrower nor a Borrower Subsidiary has previously consummated, or has currently entered into, a contract to sell, assign or otherwise transfer (other than to a Borrower Subsidiary in accordance with Section 6.156.14(a) of this Credit Agreement) any of the Licenses for which Borrower is the Winning Bidder (other than those Licenses with respect to which Borrower will not be paying the gross winning bid amounts and with respect to which Borrower therefore understands that it will be deemed to have defaulted, pursuant to the letters exchanged between Borrower and the FCC Wireless Bureau) (the “**Remaining Licenses**”), then on the date on which Borrower is required to submit such due and owing FCC Deficiency Payment to the FCC, notwithstanding the conditions precedent to making a Loan set forth in Section 2.4, Lender or DISH (solely in the event that DISH is obligated to make the FCC Deficiency Payment pursuant to the Guaranty) shall transfer immediately available funds directly to the FCC in a principal amount equal to the amount of such due and owing FCC Deficiency Payment, which will be deemed to be a Loan to Borrower (each, an “**FCC Deficiency Payment Amount Loan**”).

(vi) In the event that Borrower or a Borrower Subsidiary enters into any contract to sell, assign or otherwise transfer any of the Remaining Licenses pursuant to Section 6.3 of the LLC Agreement or Section 3.1 of the Intercreditor and Subordination Agreement: (a) Borrower or the Borrower Subsidiary, as applicable, shall condition each and every such sale, assignment or transfer upon the assumption by any purchaser, assignee or transferee (each, a “**Transferee**”) of the following obligations: (x) payment of the pro-rata share of all past, present and future FCC Deficiency Payments attributable to the Licenses to be sold, assigned or transferred calculated as follows: (i) the aggregate amount of each past, present and future FCC Deficiency Payment (which, for the avoidance of doubt, would be a maximum of \$2,226,129,000 (if all of the Remaining Licenses were being sold, assigned or transferred), plus any additional amounts for interest and enforcement and recovery costs and expenses with

respect to any FCC Deficiency Payments as set forth in Section 1(b) of the Guaranty); multiplied by (ii) ((1) the aggregate amount of the gross winning bids at the Auction ~~97~~ for the Licenses to be sold, assigned or transferred; divided by (2) the aggregate amount of the gross winning bids at the Auction ~~97~~ for all the Remaining Licenses) (each, a “**Transferred License Deficiency Payment**”); and (y) any Transferred License Deficiency Payment: (i) will first be made by Transferee via direct payment to the FCC by Transferee to satisfy any due and owing FCC Deficiency Payment then currently due and owing to the FCC; and (ii) any excess Transferred License Deficiency Payment, after payment to the FCC under the immediately preceding clause (i), will be made (A) first, to NSM for any Put Price (as defined in the LLC Agreement) then due and owing, and after the Put Price has been paid in full, then (B) to Lender by Transferee, which payment to Lender shall be considered a partial prepayment of the Loans; and (b) on any date thereafter on which Borrower is required to submit a due and owing FCC Deficiency Payment to the FCC, notwithstanding the conditions precedent to making a Loan set forth in Section 2.4, Lender or DISH (solely in the event that DISH is obligated to make the FCC Deficiency Payment pursuant to the Guaranty) shall transfer immediately available funds directly to the FCC in a principal amount equal to the result of the following formula, which will be deemed to be a Loan to Borrower: (x) the amount of such due and owing FCC Deficiency Payment; minus (y) any Transferred License Deficiency Payments required to be made to the FCC at such time (each, an “**Remaining FCC Deficiency Payment Amount Loan**”). For the avoidance of doubt, Borrower acknowledges and agrees that it shall remain jointly and severally liable with the applicable Transferee for each Transferred License Deficiency Payment.

(vii) Lender, Borrower and Guarantor hereby acknowledge and agree: (a) that Lender’s obligations to fund due and owing FCC Deficiency Payments under Sections 2.2(a)(v) and (vi) above are intended by the Borrower to induce the FCC to take certain actions and to forbear from taking certain actions as set forth in the letters described above notwithstanding Borrower’s deemed default in failing to pay certain gross winning bid amounts; and (b) that the FCC is the intended third-party beneficiary with respect to Lender’s obligations to fund due and owing FCC Deficiency Payments pursuant to Sections 2.2(a)(v) and (vi) with the right to enforce Lender’s obligations to fund FCC Deficiency Payment Amount Loans pursuant to Section 2.2(a)(v) above and Remaining FCC Deficiency Payment Amount Loans pursuant to Section 2.2(a)(vi) above. In the event that multiple due and owing FCC Deficiency Payments become due and owing to the FCC on different dates, then Lender or DISH (solely in the event that DISH is obligated to make the FCC Deficiency Payment pursuant to the Guaranty) shall submit payment directly to the FCC on the corresponding date that each such applicable due and owing FCC Deficiency Payment is due and owing to the FCC in a principal amount determined pursuant to Section 2.2(a)(v) or (vi) above, as applicable, each of which will be deemed to be a Loan to Borrower. It is understood and agreed that the Lender and the Borrower intend that the Lender or DISH (solely in the event that DISH is obligated to make the FCC Deficiency Payment pursuant to the Guaranty) will fund any due and owing FCC Deficiency Payment in an amount determined pursuant to Section 2.2(a)(v) or (vi) above, as applicable, with its own funds, and not with any funds of the Borrower or any Borrower Subsidiary. For the avoidance of doubt and to help ensure that no funds of the Borrower or any of its Subsidiaries or Affiliates are used to satisfy the obligations of the Lender or DISH (solely in the event that DISH is obligated to make the FCC Deficiency Payment pursuant to the Guaranty) to fund any due and owing FCC Deficiency Payment, it is understood and agreed that any obligation to reimburse the Lender for any due and owing FCC Deficiency Payment shall arise only following payment by the Lender

or DISH (solely in the event that DISH is obligated to make the FCC Deficiency Payment pursuant to the Guaranty) in accordance with the terms of this [Credit](#) Agreement.

(viii) In no event shall Lender be required to make an aggregate amount of Loans under this [Section 2.2\(a\)](#) in excess of the Acquisition Sub-Limit.

b. Subject to the terms and conditions and in reliance upon the representations and warranties set forth in this Credit Agreement, Lender shall make Loans to Borrower from time to time, as follows:

(i) within five (5) Business Days of a written request of Borrower (each, a “**Build-Out Loan Request**”), for Borrower to fund the Build-Out and initial operation of the License Systems and the Working Capital requirements of Guarantor and Borrower (including for expenses incurred prior to, during or after the Auction and prior to the date on which Borrower is granted any Licenses). Each Build-Out Loan Request shall provide the following information: (A) the amount of the Loan, which shall not exceed the reasonable amount necessary to fund Borrower’s Build-Out expenses and the Working Capital requirements of Guarantor and Borrower for the following calendar quarter, taking into account the then existing cash balances and reasonably expected cash flows from operations of Guarantor, Borrower and the Borrower Subsidiaries and (B) wiring instructions. In no event shall Lender be obligated to make an aggregate amount of Loans under this [Section 2.2\(b\)\(i\)](#) in excess of the Build-Out Sub-Limit. For the avoidance of doubt, if the aggregate amount of the net winning bids for the Licenses purchased by Borrower in connection with the Auction does not exceed the Required Capital Contributions, or if Borrower has any excess proceeds from Loans under [Section 2.2\(a\)](#) that are not remitted to the FCC, Lender shall not be obligated to make Loans under this [Section 2.2\(b\)\(i\)](#) until Borrower has expended all of the Required Capital Contributions and any such excess Loan proceeds other than as necessary for its reasonable Working Capital requirements.

c. Lender’s obligation to make new Loans to Borrower shall terminate upon the expiration of the Commitment Period and otherwise as expressly provided for herein.

d. Borrower may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon at least three (3) Business Days’ notice to Lender, specifying the date and amount of prepayment. If any such notice is given, the amount specified in such notice, together with accrued and unpaid interest to the date of such prepayment on the amount prepaid (it being understood that interest added to principal pursuant to [Section 2.3\(c\)](#) shall not be deemed accrued and unpaid), shall be due and payable on the date specified therein. Amounts prepaid may not be reborrowed. Subject to [Section 2.3\(c\)](#), partial or total prepayments of the Loans shall be credited first to any charges or other amounts due to Lender under the terms of this Credit Agreement or any other Loan Document, then to accrued but unpaid interest on the Loans, then to the principal balance outstanding.

e. Within three (3) Business Days after any Refund Date, Borrower shall prepay to Lender the principal amount of the Loans in an amount equal to the Refund received on such Refund Date (minus any amounts paid to the NSM Members (as defined in the

LLC Agreement) or distributed to Guarantor to make any payments to the NSM Members as required by Section 8.4 of the LLC Agreement), or, if less, the aggregate principal amount of all Loans previously made to Borrower (minus any amounts paid to the NSM Members (as defined in the LLC Agreement) or distributed to Guarantor to make any payments to the NSM Members as required by Section 8.4 of the LLC Agreement). Notwithstanding any other provision in this Credit Agreement, if timely paid in accordance with the preceding sentence, no interest shall accrue on the principal amount of the Loans so prepaid, and, for the avoidance of doubt, the Borrower shall have no obligation to pay any interest on the principal amount of the Loans so prepaid (including any interest that was previously added to the principal amount of the Loans pursuant to Section 2.3(c)).

f. Amounts prepaid or repaid may not be re-borrowed under this Credit Agreement.

g. Notwithstanding any other provision of this Section 2.2 to the contrary, the parties hereto have agreed as follows:

(i) Lender may make the Winning Bidder Balance Amount Loan via direct payment to the FCC on behalf of the Borrower.

(ii) Effective as of March 31, 2018, Lender is deemed to have exchanged six billion eight hundred seventy million four hundred ninety two thousand and six hundred sixty Dollars (\$6,870,492,660) of the amounts outstanding and owed to it under the First Amended Credit Agreement for 6,870,493 Class A Preferred Interests (as defined in the LLC Agreement), which were deemed to be extinguished and discharged with immediate effect as of March 31, 2018. Lender released the Borrower and the Guarantor from all obligations with respect such indebtedness exchanged for Class A Preferred Interests effective as of March 31, 2018.

2.3 Interest Rates and Payments.

a. Interest accrued on the aggregate principal balance from time to time outstanding under the First Amended Credit Agreement at a rate equal to twelve percent (12%) per annum from the date of the initial advance thereunder until March 31, 2018, and interest shall accrue on the aggregate principal balance from time to time outstanding hereunder at a rate ~~equal to (i) Twelve Percent (12%) of six percent (6%) per annum or (ii) Sixteen Percent (16%) per annum in the event of a termination of the Management Agreement for any reason other than a material breach by Lender thereunder~~ from March 31, 2018, through the remaining term of the Loan, in each case compounded quarterly. Interest shall be computed on the basis of a year with three hundred sixty (360) days, and the actual number of days elapsed.

b. All payments by Borrower hereunder and under the Loan Documents shall be made to Lender at its address set forth in Section 8.10 in United States dollars and in immediately available funds on the date on which such payment shall be due.

c. ~~Subject to Section 2.3(e), until the Amortization Commencement Date, all~~ All interest accrued and unpaid on the aggregate outstanding principal balance of the Loans shall be added to and become a part of the outstanding principal amount of the Loans on

and as of the last day of each calendar quarter ~~and on and as of the day immediately prior to the Amortization Commencement Date (such amount outstanding on the day immediately prior to the Amortization Commencement Date, the “Final Principal Amount”).~~ Notwithstanding anything foregoing to the contrary, any and all interest that is added to the principal balance of the Loans (i) shall not count against the Loan Commitment Amount; (ii) shall not be deemed made to Borrower for purposes of determining whether Loans made to Borrower exceed the Loan Commitment Amount, the Build-Out Sub-Limit or the Acquisition Sub-Limit and (iii) shall no longer be deemed “unpaid” at the time so added.

d. ~~On the tenth (10th) day following the Amortization Commencement Date and on each quarterly anniversary of such tenth (10th) day, Borrower shall pay principal installments equal to one sixteenth (1/16) of the Final Principal Amount together with interest installments equal to the amount of the unpaid interest accrued on the outstanding Final Principal Amount until the Maturity Date, at which time the entire remaining balance of principal and accrued interest together with all other amounts due and owing under the Loan Documents to the extent not paid shall be due and payable.~~

e. [\[Intentionally omitted\].](#)

f. [\[Intentionally omitted\].](#)

~~e. On and after the making of any Loan hereunder, within 30 days following the last Business Day of each quarter in Borrower’s fiscal year, any and all Excess Cash of Guarantor, Borrower and the Borrower Subsidiaries shall be paid to Lender and shall be credited in accordance with Section 2.2(d).~~

~~f. As long as any payment of principal or interest due under this Credit Agreement, the Note or any of the other Loan Documents remains past due (whether at the stated maturity, by acceleration or otherwise) for five (5) days or more, such overdue amount shall accrue interest at a rate (the “Default Rate”) equal to the lesser of (i) Sixteen Percent (16%) per annum and (ii) the maximum rate permitted by Applicable Law, from the date of such non-payment until such overdue amount and such interest is paid in full (whether after or before Judgment). Any amounts paid pursuant to this Section 2.3(f) shall be credited in accordance with Section 2.2(d).~~

g. Any present or future debt, liability or obligation Borrower or any Borrower Subsidiary now or hereafter owes to Lender under any Loan and any of the rights and remedies of Lender under this Credit Agreement shall remain in full force and effect, and Lender and its Affiliates reserve any and all rights and remedies they may have under any one or more of the Loan Documents in accordance with Applicable Law; provided, however, that, in the event that at any time a demand is made by the FCC in accordance with Section 1(c) of the Guaranty with respect to a Guaranteed Obligation (as defined in the Guaranty) or in accordance with Section 2 of the Guaranty with respect to any amount avoided, rescinded or recovered, and DISH fails to make timely payment pursuant to the Guaranty, then, from that time until such time as payment is made in full to the FCC (and only during such period), any indebtedness of Borrower now or hereafter held by Lender, whether directly or indirectly through any one or more of its Affiliates, shall be subordinated in right of payment to such Guaranteed Obligations (as defined

in the Guaranty), and any such indebtedness collected or received by Lender after any such Guaranteed Obligation (as defined by the Guaranty) has become due from Borrower, and any amount paid to Lender or DISH on account of any subrogation, reimbursement, indemnification or contribution rights referred to in Section 9(a) of the Guaranty shall be held in trust for the FCC and shall promptly be paid over to the FCC to be credited and applied against the Guaranteed Obligations (as defined in the Guaranty); provided that, without affecting, impairing or limiting in any manner the liability of DISH under any other provision of the Guaranty, any payment on such indebtedness received by Lender or DISH at any other time shall be permitted and need not be held in trust for or paid over to the FCC. Lender, Borrower and Guarantor hereby acknowledge and agree that the FCC is an intended third-party beneficiary of this Credit Agreement with respect to, and with the right to enforce, such subordination pursuant to this Section 2.3(g). Furthermore, Borrower and its Affiliates hereby acknowledges and agree that it and its Affiliates will not assert waiver, estoppel, laches, or any similar claim related to the failure of Lender or any of its Affiliates to exercise any claims, rights or remedies in the event such subordination is in effect or otherwise and that any statute of limitations or similar limitation will be tolled during any period in which subordination pursuant to this Section 2.3(g) is in effect.

2.4 Conditions Precedent to Lender's Obligation to Make Any Loan.

a. Lender shall not be required to make any Loan to Borrower under this Credit Agreement unless, as of the applicable Funding Date, each of the following conditions has been satisfied to Lender's satisfaction:

(i) Borrower shall have executed and delivered to Lender the Note, the Pledge Agreement and the Security Agreement.

(ii) Guarantor shall have executed and delivered the Pledge Agreement and the Security Agreement. Each Borrower Subsidiary then formed shall have executed and delivered a guaranty pursuant to Section 3.7 and a Supplement to the Security Agreement.

(iii) The Loan Parties shall have executed and delivered such Financing Statements and other instruments (other than the Control Agreements) reasonably required by Lender to create, perfect and/or maintain the security interests created pursuant to the Security Agreement and the Pledge Agreement.

(iv) Prior to the date that is two (2) Business Days prior to the commencement of the Auction, and from time to time thereafter, the Loan Parties shall have executed and delivered such Control Agreements reasonably requested by Lender.

(v) Lender shall have a perfected first priority security interest in all of Guarantor's membership interests in Borrower. Subject to the NSM Pledge Agreement and the Intercreditor and Subordination Agreement, Lender shall have a perfected first priority security interest in all of Borrower's membership interests in Borrower Subsidiaries.

(vi) Lender shall have received evidence reasonably satisfactory to it that the Financing Statements have been filed in all appropriate filing offices and that such filed Financing Statements perfect first priority security interests, subject to any Permitted Liens and

to the NSM Lien, in favor of Lender in the property described therein in which a security interest can be perfected by filing a Financing Statement.

(vii) With respect to the initial Loan under this Credit Agreement, Lender shall have received customary reports of searches of filings made with Governmental Authorities showing that there are no liens on the assets of any Loan Party other than Permitted Liens and the NSM Lien.

(viii) Each Loan Party shall have delivered to Lender an officer's certificate signed by an officer of each such Loan Party certifying that as of such Funding Date:

(A) The representations and warranties of the Loan Parties contained in Section 5 and of the Loan Parties and NSM in the Loan Documents are true and correct in all material respects at and as of the Funding Date as though then made (except for those representations and warranties which refer to facts existing at a specific earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date), except for representations and warranties which are qualified as to materiality or material adverse effect, which shall be true and correct in all respects at and as of the Funding Date (except for those representations and warranties which refer to facts existing at a specific earlier date, in which case such representations and warranties shall have been true and correct in all respects as of such earlier date) except, in each case, where such representations and warranties are not or were not true and correct in all material respects (or in all respects, as applicable) as of the applicable date due to any breach by Lender or one of its Subsidiaries or other Affiliates (whether as Lender, ~~the Management Company~~ or otherwise) of its obligations or any action or inaction consented to by Lender or one of its Subsidiaries or other Affiliates.

(B) Each Loan Party is in compliance in all material respects with the covenants set forth in Section 6, and, in the case of Guarantor, Section 3, and, in the case of the Borrower Subsidiaries, if any, with the covenants in the guaranty executed pursuant to Section 3.7, except, in each case, where the failure to comply with any such covenant was caused by Lender or one of its Subsidiaries or other Affiliates (whether as Lender, ~~the Management Company~~ or otherwise) or consented to by Lender or one of its Subsidiaries or other Affiliates.

(C) Borrower has taken all action necessary to authorize it to incur the Loan, such Loan is permitted under the terms of the LLC Agreement and the organizational documents of Borrower, and such Loan does not conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, the LLC Agreement or any other material agreement to which Borrower is a party or by which it is bound.

(D) No Event of Default (or other event that if not timely cured or corrected would, with the giving of notice or passage of time or both, result in an Event of Default) shall have occurred or be continuing.

(E) All consents required to be received in connection with the Loan and the Loan Documents from any Governmental Authority shall have been received.

(F) No Litigation or proceeding is pending against Borrower (other than as disclosed by Borrower to Lender on or prior to the Effective Date) which would reasonably be expected to result in a Borrower Material Adverse Effect that could have an adverse effect on the Licenses.

2.5 Security Documents.

The Loans and all amounts outstanding from time to time under the Loan Documents shall be secured by:

a. A first priority security interest (subject to Permitted Liens) in (i) all tangible and intangible personal property, (ii) all fixtures and (iii) all owned real property of Borrower and the Borrower Subsidiaries, now owned or hereafter acquired, and all proceeds and products of such assets. Lender's security interest in the foregoing shall be created by and shall be subject to the provisions of the Security Agreement and shall be subject to the provisions of the Intercreditor and Subordination Agreement. Promptly, and in any event within one (1) Business Day, following the formation (or, as applicable, incorporation) thereof, Borrower shall cause each Borrower Subsidiary to execute and deliver to Lender a Supplement to the Security Agreement.

b. A first priority security interest (subject to Permitted Liens) in all assets of Guarantor (other than the membership interests of Guarantor in Borrower which are addressed in clause (c) below), now owned or hereafter acquired, and all proceeds and products of such assets. Lender's security interest in the foregoing shall be created by and subject to the provisions of the Security Agreement and shall be subject to the provisions of the Intercreditor and Subordination Agreement to the extent provided therein.

c. A first priority security interest in the membership interests of Guarantor in Borrower, now owned or hereafter acquired by Guarantor, and all proceeds and products thereof. Lender's security interest in the foregoing shall be created by and shall be subject to the provisions of the Pledge Agreement and shall be subject to the provisions of the Intercreditor and Subordination Agreement to the extent provided therein.

d. A first priority security interest (subject to the NSM Lien) in Borrower's membership interests in the Borrower Subsidiaries hereafter formed or acquired by Borrower, and all proceeds and products thereof. Lender's security interest in the foregoing shall be created by and shall be subject to the provisions of the Pledge Agreement and shall be subject to the provisions of the Intercreditor and Subordination Agreement to the extent provided therein.

e. Notwithstanding the provisions of Section 2.5(a) through 2.5(d), inclusive, Lender acknowledges and agrees that the obligations of Borrower and the Borrower Subsidiaries under the Interest Purchase Agreement shall be secured by a first priority security interest in favor of NSM in and to all personal property, fixtures and owned real property of Borrower and the membership interests owned by Borrower (other than Borrower's membership interests in each Borrower Subsidiary that does not hold Licenses) and all personal property, fixtures and owned real property of the Borrower Subsidiaries, in each case now owned or

hereafter acquired, and all proceeds and products of such assets. NSM's security interests in the foregoing shall be created by and shall be subject to the provisions of the NSM Security Agreement and the NSM Pledge Agreement. NSM's security interest in the foregoing shall have priority over Lender's security interest in such assets, and Lender's security interest in the foregoing shall be subordinated to the NSM Lien in such assets and membership interests, in each case to the extent provided herein and in the Intercreditor and Subordination Agreement.

Section 3. Guarantee

3.1 Guarantee.

a. Guarantor hereby, unconditionally and irrevocably, guarantees to Lender and its respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by Borrower when due (whether at the stated maturity, by acceleration or otherwise) of the Borrower Obligations.

b. Guarantor waives any right or claims of right to cause a marshalling of Borrower's assets to the fullest extent permitted by Applicable Law.

3.2 Amendments, Etc. with Respect to the Borrower Obligations.

Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against Guarantor and without notice to or further assent by Guarantor, any demand for payment of any of the Borrower Obligations made by Lender may be rescinded by it, and the Borrower Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, increased, extended, amended, modified, accelerated, compromised, waived, surrendered or released by Lender (in accordance with the terms thereof), and this Credit Agreement and the other Loan Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as Lender may deem advisable from time to time (with the consent of Borrower, if required hereunder or thereunder), and any collateral security, guarantee or right of offset at any time held by Lender, for the payment of the Borrower Obligations may be sold, exchanged, waived, surrendered or released. Lender has no obligation to protect, secure, perfect or insure any lien at any time held by it as security for the Borrower Obligations or for the guarantee contained in this Section 3 or any property subject thereto.

3.3 Guarantee Absolute and Unconditional.

Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Borrower Obligations and notice of or proof of reliance by Lender upon the guarantee contained in this Section 3 or acceptance of the guarantee contained in this Section 3; the Borrower Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Section 3; and all dealings between Borrower and Guarantor, on the one hand, and Lender, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 3. Guarantor waives diligence, presentment, protest, demand for payment and notice of default, notice of

nonpayment, notice of dishonor and all other notices of any kind to or upon Borrower or Guarantor with respect to the Borrower Obligations and any exemption rights that either Loan Party may have. Guarantor understands and agrees that the guarantee contained in this Section 3 shall be construed as a continuing, absolute and unconditional guarantee of payment and performance without regard to (a) the validity or enforceability of this Credit Agreement or any other Loan Document, any of the Borrower Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by Lender; (b) any defense, set off or counterclaim (other than a defense of payment or performance in full hereunder) that may at any time be available to or be asserted by Borrower or any other Person against Lender or (c) any other circumstance whatsoever (with or without notice to or knowledge of Borrower or Guarantor) that constitutes, or might be construed to constitute, an equitable or legal discharge of Borrower for the Borrower Obligations or of Guarantor under the guarantee contained in this Section 3, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against Guarantor, Lender may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against Borrower or any other Person or against any collateral security or guarantee for the Borrower Obligations or any right of offset with respect thereto, and any failure by Lender to make any such demand, to pursue such other rights or remedies or to collect any payments from Borrower or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of Borrower or any other Person or any such collateral security, guarantee or right of offset, shall not relieve Guarantor of any Guarantor Obligations, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of Lender against Guarantor. For the purposes hereof, “demand” shall include the commencement and continuance of any legal proceedings.

3.4 Reinstatement.

The guarantee contained in this Section 3 shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Borrower Obligations is rescinded or must otherwise be restored or returned by Lender upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Borrower, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or collateral agent or similar officer for, Borrower or any substantial part of its property, or otherwise, all as though such payments had not been made.

3.5 Payments.

Guarantor hereby guarantees that payments hereunder shall be paid to Lender without set off or counterclaim (other than compulsory counterclaims) in United States dollars and in immediately available funds at the address of Lender set forth in Section 8.10.

3.6 Coordination with Permitted Distributions.

Notwithstanding the foregoing, Lender acknowledges and consents to the Permitted Distributions by Borrower and Guarantor. No Permitted Distributions made in accordance with

the requirements hereof shall constitute a default of the Guarantor Obligations to Lender hereunder or otherwise.

3.7 Guarantees by Borrower Subsidiaries.

Promptly, and in any event within one (1) Business Day, following the formation (or, as applicable, incorporation) thereof, Borrower shall cause each Borrower Subsidiary to execute and deliver to Lender a guarantee in the form attached hereto as Exhibit D.

Section 4. Representations and Warranties of Lender

Lender hereby represents and warrants to the Loan Parties as follows:

4.1 Organization and Standing.

Lender is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Colorado and has all requisite power and authority to execute and deliver this Credit Agreement and to perform its obligations hereunder.

4.2 Authorization by Lender.

a. This Credit Agreement has been duly and validly executed and delivered by Lender and constitutes the legal, valid and binding obligation of Lender enforceable against Lender in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally or (ii) general principles of equity.

b. Neither the execution, delivery and performance of this Credit Agreement by Lender nor the consummation by Lender of the transactions contemplated herein shall, with or without the giving of notice or the lapse of time, or both, (i) violate any Applicable Law to which Lender is subject; (ii) conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, the certificate of incorporation or bylaws of Lender or any material agreement or commitment to which Lender is a party or by which Lender or any of Lender's assets, may be bound or affected or (iii) except with respect to Borrower's participation in the Auction and procurement and retention of any Licenses by Borrower, and except with respect to the exercise of certain of Lender's remedies under the Loan Documents, require Lender to obtain any authorization, consent, approval or waiver from, or to make any filing with, any Governmental Authority or other Person.

Section 5. Representations and Warranties of the Loan Parties

The Loan Parties hereby jointly and severally represent and warrant to Lender as follows:

5.1 Organization and Standing of Loan Parties.

Each Loan Party is a limited liability company (or such other type of entity expressly consented to by Lender) duly organized, validly existing and in good standing under the laws of the State of Delaware with all requisite power and authority to own its properties, and conduct its

business as now being conducted, and is duly qualified to do business as a foreign limited liability company (or, with the express consent of Lender, other entity) in good standing in each jurisdiction where the ownership of its properties or the conduct of its business makes such qualification necessary, except in those jurisdictions where failure so to qualify shall not permanently impair title to a material amount of its properties, permits or licenses or its rights to enforce in all material respects contracts against others or expose it to substantial liabilities in such jurisdictions. Each Loan Party has all material licenses (other than Licenses), permits and authorizations necessary for the conduct of its business as currently conducted.

5.2 Authorization by the Loan Parties; Consents.

a. Borrower has all requisite power and authority to execute, deliver and perform its obligations under this Credit Agreement, the Note and all other Loan Documents to which it is a party. Borrower has taken all action necessary to authorize this Credit Agreement, the Note and all other Loan Documents to which it is a party, and all such documents have been duly authorized, executed and delivered by Borrower and are legal, valid and binding obligations of Borrower enforceable in accordance with their terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally or (ii) general principles of equity.

b. Neither the execution, delivery and performance of this Credit Agreement, the Note or the other Loan Documents by Borrower nor the consummation by Borrower of the transactions contemplated herein or therein shall, with or without the giving of notice or the lapse of time, or both, (i) violate any Applicable Law to which Borrower is subject (other than relating to any Loan Party's qualification as a "very small business," under the FCC Rules and to hold any License under provisions of Applicable Law governing alien ownership of common carrier radio licenses to the extent of any alien ownership directly or indirectly attributable to Lender under the FCC Rules, as to which the Loan Parties make no representation or warranty hereunder); (ii) conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, its certificate of formation or limited liability company agreement (or similar governing documents), any material license or permit of Borrower or any material contract to which Borrower is a party or by which Borrower may be bound or affected or (iii) except with respect to Borrower's participation in the Auction and procurement and retention of any Licenses by Borrower and except with respect to the exercise of certain of Lender's remedies under the Loan Documents, require Borrower to obtain any authorization, consent, approval or waiver from, or to make any filing with, any Governmental Authority or other Person, other than filings to perfect security interests granted pursuant to the Security Agreement.

c. Guarantor has all requisite power and authority to execute, deliver and perform its obligations under this Credit Agreement and all other Loan Documents to which it is a party. Guarantor has taken all action necessary to authorize this Credit Agreement and all other Loan Documents to which it is a party, and all such documents have been duly authorized, executed and delivered by Guarantor and are legal, valid and binding obligations of Guarantor enforceable in accordance with their terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally or (ii) general principles of equity.

d. Neither the execution, delivery and performance of this Credit Agreement or the other Loan Documents by Guarantor nor the consummation by Guarantor of the transactions contemplated herein or therein shall, with or without the giving of notice or the lapse of time, or both, (i) violate any Applicable Law to which Guarantor is subject (other than relating to Guarantor's qualification as a "very small business," under the FCC Rules and to hold any FCC license under provisions of Applicable Law governing alien ownership of common carrier radio licenses to the extent of any alien ownership directly or indirectly attributable to Lender under the FCC Rules, as to which the Loan Parties make no representation or warranty hereunder); (ii) conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, its certificate of formation, the LLC Agreement, any license or permit of Guarantor or any material contract to which Guarantor is a party or by which Guarantor may be bound or affected or (iii) except with respect to Borrower's participation in the Auction and procurement and retention of any Licenses by Borrower and except with respect to the exercise of certain of Lender's remedies under the Loan Documents, require Guarantor to obtain any authorization, consent, approval or waiver from, or to make any filing with, any Governmental Authority or other Person, other than filings to perfect security interests granted pursuant to the Security Agreements.

e. Each Borrower Subsidiary once formed will have all requisite power and authority to execute, deliver and perform its obligations under this Credit Agreement and all other Loan Documents to which it is a party. Each Borrower Subsidiary once formed will have taken all action necessary to authorize this Credit Agreement and all other Loan Documents to which it is a party, and all such documents will have been duly authorized, executed and delivered by such Borrower Subsidiary and will be legal, valid and binding obligations of such Borrower Subsidiary enforceable in accordance with their terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally or (ii) general principles of equity.

f. Neither the execution, delivery and performance of this Credit Agreement or the other Loan Documents by each Borrower Subsidiary once formed nor the consummation by each Borrower Subsidiary once formed of the transactions contemplated herein or therein shall, with or without the giving of notice or the lapse of time, or both, (i) violate any Applicable Law to which such Borrower Subsidiary is subject (other than relating to such Borrower Subsidiary's qualification as a "very small business," under the FCC Rules and to hold any FCC license under provisions of Applicable Law governing alien ownership of common carrier radio licenses to the extent of any alien ownership directly or indirectly attributable to Lender under the FCC Rules, as to which the Loan Parties make no representation or warranty hereunder); (ii) conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, its certificate of formation, the LLC Agreement, any license or permit of such Borrower Subsidiary or any material contract to which such Borrower Subsidiary is a party or by which it may be bound or affected or (iii) except with respect to Borrower's participation in the Auction and procurement and retention of any Licenses by Borrower and except with respect to the exercise of certain of Lender's remedies under the Loan Documents, require such Borrower Subsidiary to obtain any authorization, consent, approval or waiver from, or to make any filing with, any Governmental Authority or other Person, other than filings to perfect security interests granted pursuant to the Security Agreement.

5.3 Litigation.

As of the ~~Effective Date~~ September 12, 2014, there ~~is~~was no Litigation pending or, to the actual knowledge of the Loan Parties, threatened against any Loan Party that (a) seeks to enjoin or obtain damages in respect of the consummation of the transactions contemplated hereby, including the Loans, the Auction and the Build-Out, (b) has or would reasonably be expected to have a Borrower Material Adverse Effect or Guarantor Material Adverse Effect, or (c) directly or indirectly contests the validity or enforceability of any Loan Document or the LLC Agreement, ~~the Trademark License Agreement or the Management Agreement.~~

5.4 Compliance with Applicable Law.

Each Loan Party has complied and presently is in compliance in all material respects with all Applicable Law, except (i) to the extent that failure to comply with the same does not or shall not have a Borrower Material Adverse Effect or Guarantor Material Adverse Effect and (ii) the Loan Parties make no representation or warranty with respect to the FCC Rules relating to any Loan Party's qualification as a "very small business."

5.5 Subsidiaries.

As of the Effective Date, Borrower has no Subsidiaries. Following the Effective Date, Borrower shall have no Subsidiaries except as provided in Section 6.156.14. Guarantor has no Subsidiaries other than Borrower. Each Borrower Subsidiary once formed will have no Subsidiaries.

5.6 Absence of Defaults.

No Loan Party is in material default under or in material violation in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any provision of its constitutive documents or contained in any other material agreement or instrument to which it is a party or by which it is bound or to which any of its properties is subject.

5.7 Indebtedness.

No Loan Party has any indebtedness outstanding except the indebtedness permitted pursuant to the terms of this Credit Agreement and obligations under the Loan Documents. No Loan Party is in material default under any such indebtedness.

5.8 FCC Qualifications.

NSM qualifies and, for so long as may be required under FCC Rules in order for Borrower and the Borrower Subsidiaries to retain the Auction Benefits shall qualify, as a "very small business" under FCC Rules, including but not limited to Sections 1.2110(b)(1), and 27.1106(a)(2) of the FCC Rules.

5.9 Business and Financial Experience.

Each of the Loan Parties by reason of its own business and financial experience or that of its professional advisors has the capacity to protect its own interests in connection with the transactions contemplated hereby.

5.10 Accuracy and Completeness of Information.

The representations and warranties of the Loan Parties contained in this Credit Agreement or the other Loan Documents do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained herein or therein not materially misleading in light of the circumstances in which the same were made.

Section 6. Covenants of the Loan Parties

Each of the Loan Parties hereby covenants and agrees with Lender as follows:

6.1 Use of Proceeds.

a. Each of the Loan Parties shall use one hundred percent (100%) of the Loan proceeds under this Credit Agreement solely for the following purposes: (a) to make deposits, down payments, bid withdrawal payments, or payments for Licenses in connection with the Auction; (b) to finance the Build-Out and the initial operation of the License Systems, including Working Capital, as contemplated by the LLC Agreement ~~and the Management Agreement~~, in connection with Licenses and (c) to make distributions to Guarantor to finance Guarantor's Working Capital in accordance with the annual business plan and budget adopted pursuant to the provisions of the LLC Agreement, including to enable Guarantor to make Permitted Distributions due under the LLC Agreement to its Members (including tax distributions).

b. If the LLC Agreement is terminated by either party pursuant to Section 13.1(b) of the LLC Agreement or if the Borrower or any Borrower Subsidiary is at any time entitled under applicable FCC Rules to any refunds of Auction Funds, Borrower shall apply (or shall cause the applicable Borrower Subsidiary to apply) as promptly as reasonably practicable and permitted under the FCC Rules to obtain a refund of all such refundable Auction Funds.

6.2 Compliance with other Agreements.

Each Loan Party shall at all times observe and perform all of the covenants, conditions and obligations required to be performed by it under the LLC Agreement, ~~the Management Agreement and the Trademark License Agreement~~ and all other material agreements to which it is a party or by which it is bound, except to the extent the failure to observe and perform such covenants, conditions and obligations would not have a Guarantor Material Adverse Effect or a Borrower Material Adverse Effect.

6.3 Payment.

Borrower shall promptly pay to Lender the obligations due at the times and places and in the amount and manner specified in this Credit Agreement, the Note and the other Loan Documents.

6.4 Existence.

Except as otherwise permitted hereunder, each Loan Party shall maintain: (a) its limited liability company (or, if such Loan Party is not a limited liability company, corporate or other) existence under the laws of the State of Delaware; (b) its good standing and its right to carry on its business and operations in Delaware and in each other jurisdiction in which the character of the properties owned or leased by it or the business conducted by it makes such qualification necessary and the failure to be in good standing would preclude such Loan Party or Lender from enforcing its rights with respect to any material assets or expose such Loan Party to any material liability and (c) all licenses, permits and authorizations necessary to the conduct of its business.

6.5 Compliance with Laws, Taxes, Etc.

Each Loan Party shall comply in all material respects with all Applicable Law, such compliance to include paying before the same become delinquent all material taxes, material assessments and material governmental charges imposed upon it or upon its property except to the extent contested in good faith by appropriate proceedings and for which any reserves required by GAAP have been established. In the event any Loan Party fails to satisfy its obligations under this Section 6.5, as to taxes, assessments and governmental charges, Lender may, but is not obligated to, satisfy such obligations in whole or in part and any payments made and expenses incurred in doing so shall constitute principal indebtedness hereunder governed by the terms of the Note and shall be paid or reimbursed by Borrower upon demand by Lender.

6.6 Books and Records.

Each Loan Party shall at all times keep proper books and records of accounts in which full, true and correct entries shall be made of its transactions in accordance with GAAP consistently applied and shall permit representatives of Lender to examine such books and records upon reasonable request. Each Loan Party shall permit representatives of Lender to discuss its affairs and finances with the principal officers of such Loan Party and its independent public accountants, all upon reasonable notice and at such reasonable times during such normal business hours as Lender shall reasonably request. Borrower shall, promptly upon request of Lender, deliver to Lender copies of all such documents, materials, construction and operating budgets, invoices, receipts and other information reasonably requested by Lender from time to time relating to the Build-Out and the operation of the License Systems.

6.7 Assets and Insurance.

If Borrower is a Winning Bidder in the Auction, each Loan Party shall maintain in full force and effect from and after the ~~first~~ Initial Grant Date (a) an adequate errors and omissions insurance policy; (b) such other insurance coverage, on all properties of a character usually insured by organizations engaged in the same or similar business against loss or damage of a

kind customarily insured against by such organizations; (c) adequate public liability insurance against tort claims that may be asserted against such Loan Party and (d) such other insurance coverage for other hazards as Lender may from time to time reasonably require to protect its rights and benefits under this Credit Agreement and the other Loan Documents. All commercial general liability and property damage insurance policies and any other insurance policies required to be carried hereunder by each Loan Party shall (i) be issued by insurance companies with a then-current Alfred M. Best Company, Inc. (or if no longer in existence, a comparable rating service) general policy holder's rating of "A" or better and financial size category of Class XII or higher and otherwise reasonably satisfactory to Lender; (ii) designate Lender as loss payee and additional insured; (iii) be written as primary policy coverage and not contributing with or in excess of any coverage that Lender may carry; (iv) provide for thirty (30) days prior written notice to Lender of any cancellation or nonrenewal of such policy and (v) contain contractual liability coverage insuring performance by such Loan Party of the indemnity provisions of the Loan Documents. Each Loan Party shall promptly deliver to Lender upon receipt and from time to time upon Lender's request either a copy of each such policies of insurance or certificates evidencing the coverages required hereunder.

6.8 Financial Statements and Other Reports.

Each Loan Party shall maintain a system of accounting (as to its own operations and financial condition) established and administered in accordance with sound business practices such as to permit the preparation of financial statements in accordance with GAAP, and Borrower shall furnish or cause to be furnished to Lender:

a. Annual Statements. As soon as practicable following the end of each fiscal year, but in any event within ninety (90) days after the end of each fiscal year, the audited consolidated statement of income and audited consolidated statement of cash flows for such fiscal year and the audited consolidated balance sheet as of the end of such fiscal year, for Guarantor and its Subsidiaries, accompanied by the report thereon of independent certified public accountants and accompanying notes to financial statements, on a consolidated basis, prepared in accordance with GAAP; provided, however, that notwithstanding the foregoing, the financial statements for the fiscal year ended December 31, 2014 furnished or caused to be furnished by Borrower need not be audited and Borrower shall be deemed to have satisfied its obligations under this Section 6.8(a) upon furnishing or causing to be furnished unaudited versions of such financial statements to Lender.

b. Quarterly Statements. As soon as practicable following the end of each fiscal quarter (other than the fourth fiscal quarter), but in any event within thirty (30) days after the end of each such quarter, an unaudited consolidated statement of income and unaudited consolidated statement of cash flows for such quarter and an unaudited balance sheet as of the end of such quarter, for Guarantor and its Subsidiaries, on a consolidated basis, prepared (subject to normal year-end audit adjustments and absence of footnotes and supplemental information) in accordance with GAAP.

c. Monthly Statements. As soon as possible following the end of each calendar month in each fiscal year, but in any event within thirty (30) days after the end of such month, an unaudited monthly report of significant operating and financial statistics for

Guarantor and its Subsidiaries, including, to the extent applicable, number of subscribers, subscriber churn statistics, minutes of use, average revenues per subscriber, acquisition costs and capital expenditures statistics and such additional statistics and information as may be approved for internal use by such Loan Party, if any.

d. Certain Notices. Within five (5) Business Days after a Loan Party has actual knowledge of their occurrence, notice of each of the following events:

(i) the commencement of any action, suit, proceeding or arbitration against such Loan Party (other than any such action, suit, proceeding or arbitration against, or commenced by, Lender), or any material development in any such action, suit, proceeding or arbitration pending against such Loan Party;

(ii) any Event of Default or any other event that would constitute an Event of Default, but for the passage of time or the requirement that notice be given or both;

(iii) any event that would be reasonably likely to have a Borrower Material Adverse Effect that could have an adverse effect on the Licenses; and

(iv) the receipt by any Loan Party of any written notice from the FCC, other than in the ordinary course of business (together with a copy of such FCC notice).

e. Other Information. From time to time, such other information regarding the business, operations, affairs and condition (financial or otherwise) of such Loan Party as Lender may reasonably request.

6.9 Indebtedness.

Neither Borrower, Guarantor nor any Borrower Subsidiary shall, directly or indirectly, create, incur, assume, guarantee, or otherwise become or remain directly or indirectly liable with respect to any indebtedness, except:

a. the indebtedness created under this Credit Agreement and the other Loan Documents;

b. purchase money financing of telecommunications and broadband equipment incurred by any Borrower Subsidiaries ~~of up to Twenty Five Million and No Dollars (\$25,000,000.00) in the aggregate~~ if the terms of such financing are more favorable to such Borrower Subsidiaries than the terms of the Loans;

c. current trade obligations incurred in the ordinary course of business and not overdue (unless the same are being contested in good faith and by appropriate proceedings and adequate reserves are maintained therefor in accordance with GAAP);

d. renewals, extensions, replacements, refinancings or refundings of any of the foregoing that do not increase the principal amount of the indebtedness so refinanced or refunded;

e. the obligations of Borrower and the Borrower Subsidiaries under the Interest Purchase Agreement or any guarantees in respect thereof, the NSM Security Agreement or the NSM Pledge Agreement;

f. guarantees of the Borrower or any Borrower Subsidiary in respect of indebtedness otherwise permitted hereunder of the Borrower or any of the Borrower Subsidiaries; and

g. other unsecured indebtedness of the Borrower ~~in an aggregate principal amount not to exceed Twenty Five Million and No Dollars (\$25,000,000.00) at any one time outstanding~~ or any Borrower Subsidiary.

6.10 Investments.

None of the Loan Parties shall, except as otherwise set forth herein and subject to the annual budget then in place under the LLC Agreement, directly or indirectly, make or own any investment in any Person, except (a) marketable direct obligations issued or unconditionally guaranteed by the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition thereof; (b) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having the highest rating obtainable from either Standard & Poor's Corporation ("S&P") or Moody's Investors Service, Inc. ("Moody's"); (c) commercial paper maturing no more than two hundred seventy (270) days from the date of creation thereof and, at the time of acquisition, having the highest rating obtainable from either S&P or Moody's; (d) demand deposits, or time deposits maturing within one (1) year from the date of creation thereof, including certificates of deposit issued by, any office located in the United States of any bank or trust company that is organized under the laws of the United States or any state thereof and whose certificates of deposit are rated P-1 or better by Moody's or A-1 or better by S&P; (e) Guarantor's investment in Borrower (including any future investments); (f) Borrower's investments in the Borrower Subsidiaries (including any future investments); (g) investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss (whether received in bankruptcy, reorganization or otherwise); (h) guarantees permitted under Section 6.9(b); and (i) prepaid expenses or lease, utility and other similar deposits, in each case made in the ordinary course of business.

6.11 Negative Covenants.

Each Loan Party agrees that it shall not take any of the actions set forth in this Section 6.11 without the prior written approval of Lender, which approval may be withheld in Lender's sole and absolute discretion; provided, however, that for so long as Lender (or one or more of its Subsidiaries or other Affiliates) is a member of Guarantor, the approval of Lender shall be deemed given other than with respect to Section 6.11(g) with respect to any action taken by Borrower or Guarantor that may be taken without the approval of Lender (or such Subsidiary

or other Affiliate), as applicable, under the terms of the LLC Agreement or for which Lender (or such Subsidiary or other Affiliate), as applicable, has granted its approval under the terms of the LLC Agreement:

a. Conduct, transact or otherwise engage in, or commit to transact, conduct or otherwise engage in, any business or operations other than the Business;

b. Undertake any of the activities permitted by Section 6.11(a) above or own any assets related thereto, other than by and through the Borrower Subsidiaries except during the period prior to the formation of the Borrower Subsidiaries as set forth in Section ~~6.15~~6.14(a);

c. Enter into any transaction of merger or consolidation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease, transfer or otherwise dispose of, in one transaction or a series of transactions, all or substantially all of its business or property, whether now owned or hereafter acquired, in each case except for Permitted Dispositions, or, except as expressly permitted under the terms of this Credit Agreement, acquire by purchase or otherwise all or substantially all the business or property of, or stock or other evidence of beneficial ownership of, any Person, or acquire, purchase, redeem or retire any membership interests in such Loan Party now or hereafter outstanding for value;

d. Become liable, directly or indirectly, contingently or otherwise, for any obligation of any other Person by endorsement, guaranty, surety or otherwise, except in connection with (i) the Loans and (ii) indebtedness permitted pursuant to the terms of this Credit Agreement;

e. Enter into any agreement containing any provision that would be violated or breached by any borrowing hereunder or by the performance of its obligations hereunder or under any document executed pursuant hereto;

f. Own, lease, manage or otherwise operate any properties or assets other than in connection with the Business, or incur, create, assume or suffer to exist any indebtedness or other consensual liabilities or financial obligations other than as may be incurred, created or assumed or as may exist in connection with the Business (including the Loans and other obligations incurred by such Loan Party hereunder). Notwithstanding the foregoing, Borrower may invest excess funds in investments permitted under Section 6.10; and

g. Amend or modify its certificate of formation or limited liability company agreement (or similar governing document), including the LLC Agreement, in any manner that materially affects Lender as a secured lender to any of the Loan Parties.

~~6.12 Real Property.~~

~~No Loan Party shall purchase or acquire any fee interest or other estate in real property, other than a leasehold or license interest in real property.~~

6.12 ~~6.13~~ Further Assurances.

a. Borrower shall use its commercially reasonable efforts to cause (i) the condition set forth in Section 2.4(a)(iv) to be satisfied on or prior to the date that is two (2) Business Days prior to the commencement of the Auction and (ii) the condition set forth in Section 2.4(a)(viii) to be satisfied on or prior to the Initial Loan Date.

b. At any time and from time to time, upon the written request of Lender, and at the expense of the Loan Parties, each Loan Party shall promptly and duly execute and deliver such further instruments and documents and take such further action as are necessary or reasonably required by Lender to further carry out and consummate the transactions contemplated by this Credit Agreement and the other Loan Documents and to perfect or effect the purposes of this Credit Agreement and the other Loan Documents.

6.13 ~~6.14~~ Independence of Covenants.

All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of an Event of Default if such action is taken or condition exists.

6.14 ~~6.15~~ Build-Out and Operation of the Licenses.

a. As promptly as practicable after the ~~last~~ Initial Grant Date (and in any event within ten (10) Business Days thereafter), Borrower shall cause to be formed a separate Borrower Subsidiary for the Licenses granted to Borrower and shall promptly (and in any event within ten (10) Business Days following the formation of such Borrower Subsidiary) make the necessary filings with the FCC to obtain its consent to the assignment of each License granted to Borrower to the Borrower Subsidiary, and following receipt of such approval (if required), Borrower shall assign each such License to the Borrower Subsidiary. The Borrower Subsidiary that holds Licenses shall conduct no business nor incur any obligations other than under the Licenses and under this Credit Agreement, the other Loan Documents, the Interest Purchase Agreement, the NSM Security Agreement and any guarantees in respect of any of the foregoing. In addition, Borrower shall cause to be formed a Borrower Subsidiary that will serve as the operating subsidiary and that will not acquire any Licenses. Borrower shall not form nor acquire any Subsidiary that is not a Borrower Subsidiary.

b. The Loan Parties shall use their respective commercially reasonable efforts to pursue the Build-Out and the operation of the License System with respect to each License, in each case pursuant to the Business Plan (as defined in the LLC Agreement), subject to the availability of adequate capital resources to effect the same (as determined in the reasonable business judgment of the Loan Parties).

~~c. In the event of a termination of the Management Agreement or any replacement thereof, on or prior to the expiration of the applicable notice period for such termination, and provided that, if Lender (or its Subsidiary or other Affiliate) is the terminated manager, it has complied with the transition provisions of Section 10.4 of the Management Agreement, Borrower shall enter into a management agreement for the License Systems with~~

~~another Person who is reasonably capable of providing a quality of service better or substantially similar to that provided by Lender under the Management Agreement.~~

6.15 ~~6.16~~ Dividends, Distributions or Return of Capital.

a. Each Loan Party agrees that it shall not, without the prior approval of Lender, which approval may be withheld in Lender's sole and absolute discretion, make any dividend, distribution or return of capital or other payments to any Loan Party or its Affiliates, except that (i) Borrower and the Borrower Subsidiaries may make Permitted Distributions to Guarantor (and Guarantor to its Members) or to NSM, as applicable; (ii) Borrower may make distributions to Guarantor for the payment of Guarantor's expenses to the extent consistent with the Business Plan and budget then in effect under the LLC Agreement; (iii) Borrower may make payments of Management Fees to NSM pursuant to (and as defined in) Section 6.6 of the LLC Agreement and (iv) so long as no default shall have occurred and be continuing or would result therefrom, Borrower and the Borrower Subsidiaries may make distributions or returns of capital to Guarantor (and Guarantor to its Members) solely from Excess Cash, if, in the case of clause (iv) only, after giving effect to such proposed distribution or return of capital the aggregate amount of all such distributions and returns of capital paid or made in any fiscal year (including, without duplication, distributions described in clauses (i), (ii) and (iii) above) would be less than fifty percent (50%) of the Consolidated Net Income for the fiscal year immediately preceding the fiscal year in which such distribution or return of capital is paid or made.

b. For purposes of this Section ~~6.16~~ 6.15, the following term shall have the following meaning:

(i) **"Consolidated Net Income"** means, for any fiscal year, the net income of Guarantor and its Subsidiaries (without giving effect to extraordinary gains or extraordinary losses) calculated on a consolidated basis, in accordance with GAAP consistently applied.

c. Borrower shall not amend or waive (and Guarantor shall cause Borrower not to amend or waive) any term or provision of the Interest Purchase Agreement, the NSM Security Agreement or the NSM Pledge Agreement without the prior written consent of Lender, in its sole discretion (provided that if such amendment or waiver would not be adverse to the Lender's rights and remedies under the Loan Documents, then the Lender shall not unreasonably withhold, condition or delay such consent).

6.16 ~~6.17~~ Liens.

No Loan Party shall create or permit to exist at any time, any mortgage, deed of trust, trust deed, lien, security interest, pledge, charge or other encumbrance against any of its property or assets (including any owned or leased real property or other real property estate) now owned or hereafter acquired, or assign or sell any income or revenues (including accounts receivable) or rights in respect thereof, except for Permitted Liens and except for the NSM Lien and the NSM Pledge Agreement, and shall, at its sole cost and expense, promptly take all such action as may be necessary duly to discharge, or cause to be discharged all such mortgages, deeds of trust, trust deeds, liens, security interests, pledges, charges or other encumbrances.

6.17 ~~6.18~~ Disposition of Assets.

Each Loan Party agrees that it shall not, without the prior written approval of Lender, which approval may be withheld in Lender's sole and absolute discretion, sell, lease, convey, transfer, or otherwise dispose of its property or assets now owned or hereafter acquired except in the ordinary course of business, except for any Permitted Disposition and except to any wholly owned Subsidiary of Borrower, or except as permitted pursuant to subparagraph (v) of the definition of "Significant Matter" in Section 1.1 of the LLC Agreement; provided that the net cash proceeds from each such Permitted Disposition closed following any NSM exercise of its Put Right (as defined in the LLC Agreement) are paid to NSM to satisfy, in whole or in part, the obligations of Borrower and the Borrower Subsidiaries under the Interest Purchase Agreement and any guarantees with respect thereto, the NSM Security Agreement and the NSM Pledge Agreement (and in each case, to the extent that there are net cash proceeds in excess of the amount required to satisfy such obligations, such excess is retained by Borrower as collateral subject to Lender's security interest under the Loan Documents).

6.18 ~~6.19~~ Separateness Covenants.

a. Each Loan Party shall, and shall cause each of its Subsidiaries to, (i) to the extent that such entities have one or more deposit accounts, each maintain their own deposit account or accounts, separate from the accounts of Lender and its Subsidiaries and joint ventures, with commercial banking institutions and (ii) not commingle their funds with those of Lender or any of its Subsidiaries or joint ventures;

b. Each Loan Party shall, and shall cause each of its Subsidiaries to, maintain separate addresses from the addresses of Lender and its Subsidiaries and joint ventures, or to the extent ~~the~~that any Loan Party or any of its Subsidiaries may have offices in the same location as Lender or any of its Subsidiaries or joint ventures, to maintain a fair and appropriate allocation of overhead costs among them, with each such entity bearing its fair share of such expense;

c. Guarantor shall issue quarterly and annual consolidated financial statements from time to time as prepared in accordance with GAAP, consistently applied;

d. Each Loan Party shall, and shall cause each of its Subsidiaries to, (i) each maintain its separate status as a limited liability company and (ii) each conduct its affairs in accordance with its certificate of formation and limited liability company agreement and observe all necessary, appropriate and customary company formalities, including, but not limited to, holding all regular and special members' and managers' meetings appropriate to authorize company action, keeping separate and accurate minutes of its meetings, passing all resolutions or consents necessary to authorize actions taken or to be taken, and maintaining accurate and separate books, records and accounts, including, but not limited to, payroll and intercompany transaction accounts, to the extent applicable;

e. Each Loan Party shall not, and shall not permit any of its Subsidiaries to, (i) assume or guarantee any of the liabilities of, or pledge any of its assets as security for the liabilities of, Lender or any of its Subsidiaries or joint ventures or (ii) hold out

the credit of Lender or any of its Subsidiaries or joint ventures as being able to satisfy the obligations of such Loan Party or any of its Subsidiaries (which shall be deemed not to refer to any disclosure by such Loan Party or any of its Subsidiaries of any capital contributions or loans that Lender or any of its Subsidiaries is required to make to such Loan Party or any of its Subsidiaries or of any other obligations that Lender or any of its Subsidiaries is required to perform for the benefit of such Loan Party or any of its Subsidiaries), except with respect to any guarantees or assumptions of indebtedness or other liabilities that have been expressly agreed to by Lender or any of its Subsidiaries in writing;

f. Each Loan Party shall not, and shall cause each of its Subsidiaries not to, authorize the use of its name or trademarks or service marks by Lender or any of its Subsidiaries or joint ventures, except pursuant to a written license agreement;

g. Each Loan Party shall not, and shall not permit any of its Subsidiaries to, ~~except as permitted under the Trademark License Agreement,~~ conduct its own business with suppliers of goods and services, lenders or purchasers of securities in the name of Lender or any of its Subsidiaries or joint ventures; and

h. If any Loan Party or any of its Subsidiaries obtains actual knowledge that Lender or any of its Subsidiaries or joint ventures has represented or indicated to any supplier of goods and services to, lender to or purchaser of securities of any Loan Party or any of its Subsidiaries that the credit of Lender or any of its Subsidiaries or joint ventures is available to satisfy the obligations of any Loan Party or any of its Subsidiaries (which shall be deemed not to refer to any disclosure by Lender or any of its Subsidiaries or joint ventures of any capital contributions or loans that Lender or any of its Subsidiaries is required to make to any Loan Party or any of its Subsidiaries or of any other obligations that Lender or any of its Subsidiaries is required to perform for the benefit of any Loan Party or any of its Subsidiaries), other than with respect to any guarantees or assumptions of indebtedness or other liabilities that have been expressly agreed to by Lender or any of its Subsidiaries in writing, then each such Loan Party shall, and shall cause each of its Subsidiaries to, provide written notice to any person to whom such representation or indication was made, to make clear that the credit of Lender and its Subsidiaries and joint ventures is not available to satisfy the obligations of such Loan Party or any of its Subsidiaries, other than with respect to any guarantees or assumptions of indebtedness or other liabilities that have been expressly agreed to by Lender or any of its Subsidiaries in writing.

Section 7. Events of Default and their Effect

7.1 Events of Default.

The occurrence and continuance of any of the following shall constitute an Event of Default under this Credit Agreement and the Note (each, an “**Event of Default**”):

a. Failure to Pay. Borrower fails to pay when due and payable any principal payment, interest or other payment required under the terms of this Credit Agreement or the Note that is not cured within five (5) Business Days after the date on which Lender delivers notice to Borrower that such payment is past due; or

b. Breaches of Other Covenants. Any Loan Party fails to observe or perform in any material respect any covenant, obligation or agreement contained in this Credit Agreement or any covenant, obligation or agreement under any of the other Loan Documents (or, with respect to any portion of any such covenant, obligation or agreement which is qualified by materiality, any Loan Party fails to observe or perform such portion of such covenant, obligation or agreement in any respect, taking into account such qualifications) and such failure shall continue unremedied for thirty (30) days after the earlier of (i) notice thereof from Lender or (ii) the actual knowledge of such failure by a senior executive officer of such Loan Party; provided, however, that a failure to observe any covenant set forth in Section 6.11, Section 6.16~~6.15~~ or Section 6.18~~6.17~~ shall constitute an Event of Default immediately upon the occurrence thereof and without any cure period; provided, further, that no such failure shall be an Event of Default if such failure was caused by Lender or one of its Subsidiaries or other Affiliates (whether as Lender,~~the Management Company~~ or otherwise) or consented to by Lender or one of its Subsidiaries or other Affiliates; or

c. Bankruptcy or Insolvency Proceedings. (i) Any Loan Party (A) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property; (B) is unable, or admits in writing its inability, to pay its debts generally as they mature; (C) makes a general assignment for the benefit of its or any of its creditors; (D) is dissolved or liquidated in full or in part; (E) becomes insolvent (as such term may be defined or interpreted under Applicable Law); (F) commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or (G) takes any action for the purpose of effecting any of the foregoing or (ii) a case or proceeding under the bankruptcy laws of the United States now or hereafter in effect or under any insolvency, reorganization, receivership, readjustment of debt, dissolution or liquidation law of any jurisdiction now or hereafter in effect is filed against any Loan Party or all or any part of its properties and such application is not dismissed, bonded or discharged within sixty (60) days after the date of its filing or such Loan Party shall file any answer admitting or not contesting such petition or application or indicates its consent to, acquiescence in or approval of any such action or proceeding or the relief requested is granted sooner; or

d. Representations and Warranties. Any representation or warranty made by any Loan Party herein or in any other Loan Document shall be false as of the date made (or deemed made) in any material respect, and not cured prior to the expiration of any applicable cure period, (except that no breach of any representation or warranty made by any Loan Party in Section 5.4, 5.6 or 5.7 shall be an Event of Default if such breach was caused by Lender or one of its Subsidiaries or other Affiliates (whether as Lender,~~the Management Company~~ or otherwise) or consented to by Lender or one of its Subsidiaries or other Affiliates); or

e. Change in Control. The occurrence of any Borrower Change in Control Event or Guarantor Change in Control Event; or

f. Termination of LLC Agreement. The termination of the LLC Agreement in accordance with its terms; or

g. Loan Documents. Any Loan Document ceases to be in full force and effect or any lien in favor of Lender ceases to be, or is not, valid, perfected and prior to all other liens and security interests (other than Permitted Liens and the NSM Lien), except (i) as a result of Lender's relinquishment of possession of any unit certificates, promissory notes or other documents delivered to it under the Security Agreement or the Pledge Agreement; (ii) where the perfection of such liens is pending during the transmission to the appropriate filing office of applicable and appropriate documentation required by Applicable Law to perfect such liens; (iii) with respect to intellectual property collateral, where the perfection of such liens may not be accomplished by recording in the United States Patent and Trademark Office and/or the United States Copyright Office and the filing of Uniform Commercial Code financing statements or where the time period contemplated in the applicable Security Agreement has not expired or (iv) as a result of the release of such lien as a result of a Permitted Disposition or other disposition hereunder in accordance with the terms of the Intercreditor and Subordination Agreement, the Security Agreement or the Pledge Agreement; or

h. Loss of Status. NSM or any Loan Party admits, or it is determined in an order, notice or ruling of the FCC, that NSM or any Loan Party holding FCC Licenses has ceased to qualify as a "very small business" under FCC Rules, including but not limited to, Sections 1.2110(b), and 27.1106(a)(2) of the FCC Rules, if such qualification is then required under FCC Rules in order for Borrower and the Borrower Subsidiaries to retain the Auction Benefits; or

i. Cross Default. Any Loan Party (i) defaults in making payments of any indebtedness permitted under Section 6.9 that is outstanding in a principal amount of at least Five Million and No Dollars (\$5,000,000.00) (but excluding indebtedness outstanding hereunder) on the scheduled due date with respect thereto beyond the period of grace, if any, provided in the instrument or agreement under which such indebtedness was created; (ii) defaults in making any payment of any interest on such indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such indebtedness was created or (iii) defaults in the observance or performance of any other agreement or condition relating to such indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, in each case, beyond the applicable grace period, if any, which default permits the lender thereunder to declare such indebtedness to be due and payable prior to its stated maturity; provided, however, that any such default by a Loan Party shall not be an Event of Default hereunder if and to the extent that, and for so long as, such Loan Party's default is proximately caused by Lender's (or its assignee's) failure to satisfy its funding obligations under this Credit Agreement or the LLC Agreement; or

j. Borrower Material Adverse Effect. A Borrower Material Adverse Effect caused directly or indirectly by any Loan Party that could have an adverse effect on the Licenses.

7.2 Remedies Upon Event of Default.

a. If any Event of Default shall occur and be continuing then Lender, upon notice to the Borrower, may do any or all of the following: (i) terminate or reduce the commitment of Lender to make Loans to Borrower under this Credit Agreement; (ii) declare all

obligations of Borrower hereunder and under the Note to be immediately due and payable, whereupon the Borrower Obligations hereunder and under the Note shall immediately become due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, anything in this Credit Agreement or in any other Loan Document to the contrary notwithstanding; (iii) enforce its rights under any one or more of the Loan Documents in accordance with Applicable Law; (iv) subject to prior FCC approval, if required, without any obligation to do so, make disbursements to or on behalf of Borrower or any of its Subsidiaries to cure any default and render any performance under any other agreement by Borrower or any of the Borrower Subsidiaries and (v) subject to prior FCC approval, if required, perform on behalf of Borrower or any of the Borrower Subsidiaries any and all work and labor necessary to build, operate and maintain the License System; provided that upon the occurrence of any Event of Default under Section 7.1(c), 7.1(e) or 7.1(h) the commitment of Lender shall immediately terminate and all Borrower Obligations shall automatically become immediately due and payable without notice or demand of any kind.

b. Upon the occurrence of any Event of Default and at any time thereafter so long as any Event of Default shall be continuing, Lender may proceed to protect and enforce this Credit Agreement, the Note and the other Loan Documents by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted, or for foreclosure hereunder, or for the appointment of a receiver or receivers for the collateral subject to the applicable Loan Documents or for the recovery of judgment for the indebtedness secured thereby or for the enforcement of any other proper, legal or equitable remedy available under Applicable Law.

c. Borrower shall pay to Lender forthwith upon demand any and all expenses, costs and other amounts to the extent due hereunder or under the other Loan Documents, whether incurred before, after or during the exercise of any of the foregoing remedies, including all reasonable legal fees and other reasonable costs and expenses incurred by Lender by reason of the occurrence of any Event of Default, the enforcement of this Credit Agreement and the other Loan Documents and/or the preservation of Lender's rights hereunder and under the other Loan Documents.

d. Any and all remedies of Lender hereunder, including those described in Sections 7.2(a) through (c), inclusive, above are subject to the terms of the Intercreditor and Subordination Agreement and must be exercised in accordance therewith.

Section 8. Miscellaneous

8.1 Entire Agreement.

This Credit Agreement (including the attached Exhibits) and the other Loan Documents, together with any schedules and exhibits hereto and thereto, constitute the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior and all contemporaneous oral or written negotiations, proposals, offers, agreements, commitments and understandings relating to such subject matters.

Notwithstanding the foregoing, that certain Appeal Contingency Agreement dated as of October 1, 2015 by and among the parties hereto and NSM shall continue to apply, provided, however, that (i) any references therein to the Credit Agreement shall instead be references to this Agreement, (ii) any references therein to the LLC Agreement shall instead be references to the Third Amended and Restated Limited Liability Company Agreement effective as of the Effective Date, and (iii) any references therein to the Interest Purchase Agreement shall instead be references to the Second Amended and Restated Interest Purchase Agreement effective as of June 7, 2018.

8.2 Successors and Assigns.

Neither this Credit Agreement nor any Loan Documents may be assigned by any Loan Party without the consent of Lender, which consent may be withheld in its sole and absolute discretion, and any assignment without such prior written consent shall be null and void and without force or effect. Lender may assign all or a portion of its rights under this Credit Agreement or any Loan Documents to an Affiliate of Lender without the consent of the Loan Parties; provided that such Affiliate of Lender agrees to be bound by all of the terms hereof and thereof and of the Intercreditor and Subordination Agreement; provided, further, that, unless Borrower otherwise consents in its sole and absolute discretion, Lender shall remain obligated under this Credit Agreement to make all Loans required hereunder. No such permitted assignment shall relieve any party hereto of any liability for a breach of this Credit Agreement or of any other Loan Document or of the Intercreditor and Subordination Agreement by such party or its assignee. Any such assignment shall be subject to compliance with the requirements of all applicable FCC Rules. This Credit Agreement, the Loan Documents and the Intercreditor and Subordination Agreement each shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors in interest.

8.3 Remedies Cumulative.

Notwithstanding anything to the contrary herein, all rights, powers and remedies provided to Lender under this Credit Agreement and under the other Loan Documents or otherwise available in respect hereof or thereof, at law or in equity, shall not be mutually exclusive and shall be cumulative and not alternative, and the exercise or beginning of the exercise of any one or more right, power or remedy thereof by Lender pursuant to this Credit Agreement or the other Loan Documents shall not preclude the simultaneous or later exercise by Lender of any other such right, power or remedy by Lender hereunder or under Applicable Law or the principles of equity.

8.4 Indemnity; Reimbursement of Lender.

a. Each Loan Party agrees to indemnify, defend and hold Lender and its Affiliates, directors, employees, attorneys or agents harmless from and against any and all claims, demands, losses, judgments and liabilities (including but not limited to, liabilities for penalties) of any nature (“**Claims**”), and to reimburse Lender for all reasonable and documented out-of-pocket costs and expenses, including reasonable attorneys’ fees and expenses, arising from any of the Loan Documents or the exercise of any right or remedy granted to Lender hereunder or thereunder, other than any Claim (including of Borrower) arising from Lender’s

gross negligence, willful misconduct or bad faith, or from Lender's failure to comply with its obligations under this Credit Agreement or any other Loan Document. In no event shall Lender be liable for any matter or thing in connection with the Loan Documents other than to account for moneys actually received by Lender in accordance with the terms hereof. In addition, in no event shall any party hereto be liable for any indirect, incidental, consequential or special damages (including damages for harm to business, lost revenues, lost savings, or lost profits suffered by any of the Loan Parties, Lender or other Persons), regardless of the form of action, whether in contract, warranty, strict liability, or tort, including negligence of any kind whether active or passive, and regardless of whether Lender or the Loan Parties knew of the possibility that such damages could result.

b. All indemnities contained in this Section 8.4 and elsewhere in this Credit Agreement shall survive the expiration or earlier termination of this Credit Agreement.

8.5 Highest Lawful Rate.

Anything herein to the contrary notwithstanding, the obligations of Borrower on the Note shall be subject to the limitation that payments of interest shall not be required, for any period for which interest is computed hereunder, to the extent that contracting for or receipt thereof would be contrary to provisions of any Applicable Law applicable to Lender limiting the highest rate of interest that may be lawfully contracted for, charged or received by Lender, as determined by a final Judgment of a court of competent jurisdiction. Any interest paid in excess of such highest rate shall be applied to the principal balance of the Borrower Obligations.

8.6 Counterparts.

This Credit Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument.

8.7 Amendment; Waiver.

Neither this Credit Agreement nor any provision hereof may be amended, modified, or waived except in a writing signed by the parties. No failure or delay of any party in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce any such right or power, preclude any other further exercise thereof or the exercise of any other right or power. No waiver by any party of any departure by any other party from any provision of this Credit Agreement shall be effective unless the same shall be in a writing signed by the party against which enforcement of such waiver or consent is sought, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice or similar communication by any party to another shall entitle such other party to any other or further notice or similar communication in similar or other circumstances, except as specifically provided herein.

8.8 Payments on Business Days.

Whenever any payment to be made hereunder or under any Note shall be stated to be due on a day other than a Business Day, such payment may be made on the next succeeding Business

Day and such extension of time shall in such case be included in computing interest, if any, in connection with such payment.

8.9 Expenses.

Except as specifically provided herein, each party hereto shall pay all costs and expenses incurred by it or on its behalf in connection with this Credit Agreement, including the preparation of this Credit Agreement, and the transactions contemplated hereby, including, without limiting the generality of the foregoing, fees, and expenses of its own consultants, accountants, and counsel. Notwithstanding the foregoing, Borrower shall pay, immediately when due, all present and future stamp and other like duties and applicable taxes, if any, to which this Credit Agreement may be subject or give rise.

8.10 Notices.

All notices or requests that are required or permitted to be given pursuant to this Credit Agreement shall be given in writing and shall be sent by facsimile transmission, or by first-class certified mail, postage prepaid, or by overnight courier service, charges prepaid, to the party to be notified, addressed to such party at the address(es) set forth below, or sent by facsimile to the fax number(s) set forth below, or such other address(es) or fax number(s) as such party may have substituted by written notice (given in accordance with this Section) to the other party. The sending of such notice with confirmation of receipt of the complete transmission (in the case of facsimile transmission) or receipt of such notice (in the case of delivery by first-class certified mail or by overnight courier service) shall constitute the giving thereof.

If to be given to Borrower:

c/o Doyon, Limited
Attn: Allen M. Todd, General Counsel

If by overnight courier service:

Doyon, Limited
1 Doyon Place, Suite 300
Fairbanks, AK 99701-2941

If by first-class certified mail:

Doyon, Limited
1 Doyon Place, Suite 300
Fairbanks, AK 99701-2941

If by facsimile:

Fax #: (907) 459-2075

If to be given to Lender:

American AWS-3 Wireless II L.L.C.
Attn: EVP, Corporate Development

If by overnight courier service:

9601 South Meridian Blvd.
Englewood, Colorado 80112

If by first-class certified mail:

P.O. Box 6655
Englewood, Colorado 80155

If by facsimile:

Fax #: (303) 723-2020

cc: Lowenstein Sandler LLP
1251 Avenue of the Americas

cc: Office of the General Counsel
American AWS-3 Wireless II L.L.C.

New York, NY 10020
Attention: Michael A. Brosse
Fax: (973) 422-6841

If by overnight courier service:
Same address as noted above for Lender
overnight courier delivery

If by first-class certified mail:
Same address as noted above for Lender
first-class certified mail delivery

If by facsimile:
Fax #: (303) 723-2050

8.11 Severability.

Subject to Section 8.12, each provision of this Credit Agreement shall be construed as separable and divisible from every other provision and the enforceability of any one provision shall not limit the enforceability, in whole or in part, of any other provision. In the event that a court or administrative body of competent jurisdiction holds any provision of this Credit Agreement to be invalid, illegal, void or less than fully enforceable as to time, scope or otherwise, the parties agree that such provision shall be construed by limiting and reducing it so that such provision is valid, legal, and fully enforceable while preserving to the greatest extent permissible the original intent of the parties; the remaining terms and conditions of this Credit Agreement shall not be affected by such alteration, and shall remain in full force and effect.

8.12 Reformation.

a. If the FCC should (i) change any FCC Rule in a manner that would adversely affect the enforceability of this Credit Agreement; (ii) directly or indirectly reject or take action to challenge the enforceability of this Credit Agreement or (iii) take any other steps whatsoever, on its own initiative or by petition from another Person, to challenge or deny the transactions contemplated hereby or the eligibility of ~~the License Company~~ Borrower to hold any of the licenses won in the Auction or the ability of ~~the License Company~~ Borrower to realize the Auction Benefits (each, an “Adverse FCC Action”), then the parties shall promptly consult with each other and negotiate in good faith to reform and amend this Credit Agreement so as to eliminate or amend to make unobjectionable any portion that is the subject of any Adverse FCC Action (each, an “Adverse FCC Action Reformation”). Furthermore, subject to consent in writing by Lender, in the event of an Adverse FCC Action, the parties other than Lender (the “Non-American II Members”) shall use their best efforts with respect to all aspects of the Adverse FCC Action to agree upon an Adverse FCC Action Reformation with Lender; provided, however, that in the event that an element of any such Adverse FCC Action materially adversely impacts the material economic benefits of the Non-American II Members (each, an “Economic Element”), then the Non-American II Members may use commercially reasonable efforts solely with respect to the Economic Element of the Adverse FCC Action to agree upon an Adverse FCC Action Reformation with Lender. None of the parties hereto shall take any action that is reasonably likely to contribute to such Adverse FCC Action.

b. If the FCC should determine that a portion of this Credit Agreement or any of the other Loan Documents, after having been reformed pursuant to paragraph (a) above, continues to violate FCC Rules, then such provisions shall be null and void and the remainder of this Credit Agreement and the other Loan Documents shall continue in full force and effect; provided that the relative economic and other rights and benefits expected to be derived by the parties hereunder are preserved.

8.13 Governing Law.

This Credit Agreement shall be construed in accordance with and governed by the internal laws of the State of New York applicable to agreements made and to be performed wholly within such jurisdiction, without regard to principles of conflicts of law provisions of that or of any other state, all rights and remedies being governed by said laws.

8.14 Arbitration.

a. Arbitration. Any controversy or claim arising out of or relating to this Credit Agreement or any of the other Loan Documents, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Within fifteen (15) days after the commencement of arbitration, each party shall select one Person to act as arbitrator and the two selected shall select a third arbitrator within ten (10) days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association. The place of arbitration shall be Chicago, Illinois or such other place as the parties may agree. The arbitrators shall be knowledgeable in the broadband industry and public auctions of FCC licenses. Notwithstanding the foregoing, if the arbitration is consolidated with a then pending arbitration proceeding pursuant to Section 8.14(d), then the arbitrators and the place of arbitration for such then pending proceeding shall be the arbitrators and place of arbitration hereunder.

b. Interim Relief. Any party may apply to the arbitrators seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this Credit Agreement or any of the other Loan Documents, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy).

c. Award. The award shall be made within ninety (90) days of the filing of the notice of intention to arbitrate, and the arbitrators shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the parties and the arbitrators if necessary.

d. Consent to Consolidation of Arbitrations. Each party irrevocably consents to consolidating any arbitration proceeding under this Credit Agreement and/or any of the other Loan Documents with any other arbitration proceedings involving any party that may

be then pending that are brought under the LLC Agreement, ~~the Trademark License Agreement or the Management Agreement.~~

e. Venue. Each party hereto irrevocably and unconditionally consents to the exclusive jurisdiction of the courts of the State of Delaware and of the United States District Courts located in the State of Delaware for entering of any judgment on the award rendered by the arbitrators; provided that if such courts do not have jurisdiction to enforce such judgment, then the parties may enter such judgment in any other court having jurisdiction thereof.

8.15 Lender's Discretion.

Unless this Credit Agreement shall otherwise expressly provide, Lender shall have the right to make any decision, grant or withhold any consent, and exercise any other right or remedy hereunder in its sole and absolute discretion.

8.16 No Third-Party Beneficiaries.

Except solely with respect to the designation of the FCC as an intended third-party beneficiary of certain obligations described in Sections 2.2(a)(vii) and 2.3(g) of this Credit Agreement ~~(which were added in Sections 2 and 3 of the Second Amendment to this Credit Agreement)~~, this Credit Agreement is entered into solely for the benefit of the parties and no Person, other than the parties and their respective successors and permitted assigns, may exercise any right or enforce any obligation hereunder, and nothing herein expressed or implied will create or be construed to create any third-party beneficiary rights hereunder. Except as otherwise expressly provided herein in Section 2.3(g) ~~(which was added in Section 3 of the Second Amendment to this Credit Agreement)~~, nothing in this Credit Agreement shall impair, as between the Borrower and the Borrower Subsidiaries and NSM, or as between the Borrower and the Borrower Subsidiaries and Lender, the obligations of the Borrower and the Borrower Subsidiaries to pay principal, interest, fees, and other amounts as provided in the Interest Purchase Agreement or the NSM Security Documents, or in the Intercreditor and Subordination Agreement or the Loan Documents, respectively.

8.17 Further Assurances.

Each party shall execute and deliver any such further documents and shall take such further actions as any other party may at any time or times reasonably request, at the expense of the requesting party, consistent with the provisions hereof in order to carry out and effect the intent and purposes of this Credit Agreement.

8.18 Transferred License Deficiency Payments.

Notwithstanding any provisions of the Intercreditor and Subordination Agreement or the NSM Security Documents to the contrary, in the event that (a) Guarantor is in breach of Section 8.1 of the LLC Agreement by failing to pay the Put Price (as defined in the LLC Agreement) when due following the exercise of the Put Right (as defined in the LLC Agreement) thereunder and ~~License Company~~Borrower is in breach of Sections 2.2-2.4 of the Interest Purchase Agreement by failing to pay the Put Price when due following the exercise of the Put thereunder;

and (b) NSM is exercising its rights to sell, assign or transfer NSM Collateral (as defined in the Intercreditor and Subordination Agreement) pursuant to Section 3.1 of the Intercreditor and Subordination Agreement; then each of Lender, Borrower, Guarantor and NSM hereby agree that: (i) the “Interest Purchase Agreement Obligations” (as defined in the Intercreditor and Subordination Agreement) and the “Obligations” (as defined in each of the NSM Security Documents) shall each be deemed to include the amount of any Transferred Licensed Deficiency Payment(s) applicable to the NSM Collateral being sold, assigned or transferred; and (ii) for avoidance of doubt under the Intercreditor and Subordination Agreement and each of the NSM Security Documents, all such Obligations and Interest Purchase Agreement Obligations (including any such Transferred License Deficiency Payment(s)) shall be deemed to be owed to NSM; provided that NSM or Borrower or a Borrower Subsidiary promptly remits or causes to be promptly remitted to the FCC any Transferred Licensed Deficiency Payment applicable to the NSM Collateral being sold, assigned or transferred using the proceeds of such sale, assignment or transfer.

[Remainder of Page Intentionally Blank; Signature Page Follows]

REDACTED – FOR PUBLIC INSPECTION

IN WITNESS WHEREOF, the parties hereto have signed this Credit Agreement, or have caused this Credit Agreement to be signed in their respective names by an officer, hereunto duly authorized, on the date first written above.

AMERICAN AWS-3 WIRELESS II L.L.C.,
as Lender

By: _____
Name: _____
Title: _____

NORTHSTAR WIRELESS, LLC,
as Borrower

By Northstar Spectrum, LLC
Its sole member

By Northstar Manager, LLC
Its Manager

By Doyon, Limited,
Its Manager

By: _____
Name: _____
Title: _____

NORTHSTAR SPECTRUM, LLC,
as Guarantor

By Northstar Manager, LLC
Its Manager

By Doyon, Limited,
Its Manager

By: _____
Name: _____
Title: _____

EXHIBITS:

- A. FORM OF PLEDGE AGREEMENT**
- B. FORM OF PROMISSORY NOTE**
- C. FORM OF SECURITY AGREEMENT**
- D. FORM OF SUBSIDIARY GUARANTY**

ATTACHMENT 3

TERMINATION OF MANAGEMENT SERVICES AGREEMENT

This Termination of Management Services Agreement (“**MSA Termination Agreement**”), effective as of March 31, 2018 (the “**Effective Date**”), is entered into between AMERICAN AWS-3 WIRELESS II L.L.C., a Colorado limited liability company (“**American II**”), and NORTHSTAR WIRELESS, LLC, a Delaware limited liability company (the “**License Company**”). Individually, each of American II and the License Company is a “**Party**” and collectively they are “**Parties**.” Capitalized words or phrases used and not otherwise defined herein shall have the respective meanings ascribed thereto in the MSA (defined below).

RECITALS

WHEREAS, the License Company participated in the Auction and the related Auction Process;

WHEREAS, the License Company was a Winning Bidder in the Auction;

WHEREAS, the Parties entered into a Management Services Agreement dated as of September 12, 2014 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**MSA**”), pursuant to which American II would manage the build-out and operation of the License Company Systems, at all times subject to the License Company’s oversight, review, supervision and control; and

WHEREAS, the Parties now seek to terminate the MSA in connection with their modifications to the broader transaction.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

SECTION 1.1 Termination of MSA.

(a) The MSA is terminated as of the Effective Date notwithstanding any notice or similar provisions in the MSA, any and all of which are hereby waived.

(b) Notwithstanding Section 16.8 of the MSA, no provisions of the MSA shall survive this termination.

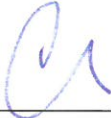
SECTION 1.2 Counterparts.

This MSA Termination Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument.

* * *

IN WITNESS WHEREOF, the Parties hereto have caused this Termination of Management Services Agreement to be executed by their respective authorized representatives as of the date and year first above written.

AMERICAN AWS-3 WIRELESS II L.L.C.

By: 
Name: Charles W. Eger
Title: Chairman

NORTHSTAR WIRELESS, LLC

By: Northstar Spectrum, LLC, Its sole member
By: Northstar Manager, LLC, Its Manager
By: Doyon, Limited, Its Manager

By: _____
Name: _____
Title: _____

[Signature Page to Termination of MSA]

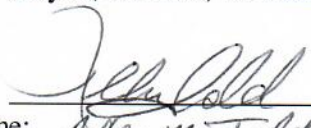
IN WITNESS WHEREOF, the Parties hereto have caused this Termination of Management Services Agreement to be executed by their respective authorized representatives as of the date and year first above written.

AMERICAN AWS-3 WIRELESS II L.L.C.

NORTHSTAR WIRELESS, LLC

By: _____
Name:
Title:

By: Northstar Spectrum, LLC, Its sole member
By: Northstar Manager, LLC, Its Manager
By: Doyon, Limited, Its Manager

By: 
Name: *Allen M. Todd*
Title: *General Counsel & Authorized Representative*

[Signature Page to Termination of MSA]

ATTACHMENT 4

TERMINATION OF TRADEMARK LICENSE AGREEMENT

This Termination of Trademark License Agreement (“**Trademark Termination Agreement**”), effective as of March 31, 2018 (the “**Effective Date**”), is entered into between DISH NETWORK L.L.C., a Delaware limited liability company, with its principal offices located at 9601 S. Meridian Blvd., Englewood, CO 80112 (“**DISH**”), and NORTHSTAR WIRELESS, LLC, a Delaware limited liability company, with its principal offices located at 1 Doyon Place, Suite 300, Fairbanks, Alaska 99701-2941 (the “**Licensee**”). Individually, each of DISH and the Licensee is a “**Party**” and collectively they are “**Parties**.” Capitalized words or phrases used and not otherwise defined herein shall have the respective meanings ascribed thereto in the Trademark Agreement (defined below).

WHEREAS, American AWS-3 Wireless II L.L.C., an affiliate of DISH (“**American II**”) and Northstar Manager, LLC entered into a Limited Liability Company Agreement of Northstar Spectrum, LLC dated as of September 12, 2014 (as amended, amended and restated, supplemented or otherwise modified from time to time);

WHEREAS, American II and the Licensee entered into a Management Services Agreement dated as of September 12, 2014 (as amended, amended and restated, supplemented or otherwise modified from time to time) which contemplated that American II would provide to the Licensee management services with respect to the network build-out and operation of the Licensee’s Systems, subject to the Licensee’s oversight, review, supervision and control; and

WHEREAS, the Parties entered into a Trademark License Agreement dated as of September 12, 2014 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Trademark Agreement**”), pursuant to which DISH licensed to the Licensee the Trademarks owned, maintained and/or developed by DISH.

WHEREAS, the Parties now seek to terminate the Trademark Agreement in connection with their modifications to the broader transaction.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

SECTION 1.1 Termination of Trademark Agreement.


(a) The Trademark Agreement is terminated as of the Effective Date, notwithstanding any Notice or similar provision in the Trademark Agreement, any and all of which are hereby waived.

(b) Notwithstanding Section 10.21 of the Trademark Agreement, Sections 7.4, 8.3, 8.4, and 8.5 of the Trademark Agreement shall survive this termination.

IN WITNESS WHEREOF, the Parties hereto have caused this Termination of Trademark License Agreement to be executed by their respective authorized representatives as of the date and year first above written.

DISH NETWORK L.L.C.

NORTHSTAR WIRELESS, LLC

By: 
Name: Charles W. Ergen
Title: Chairman

By Northstar Spectrum, LLC, Its sole member
By Northstar Manager, LLC, Its Manager
By Doyon, Limited, its Manager

By: _____
Name: _____
Title: _____

[Signature Page to Termination of Trademark License Agreement]

SECTION 1.2

Counterparts.

This Trademark Termination Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument.

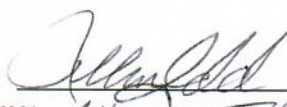
IN WITNESS WHEREOF, the Parties hereto have caused this Termination of Trademark License Agreement to be executed by their respective authorized representatives as of the date and year first above written.

DISH NETWORK L.L.C.

NORTHSTAR WIRELESS, LLC

By: _____
Name:
Title:

By Northstar Spectrum, LLC, Its sole member
By Northstar Manager, LLC, Its Manager
By Doyon, Limited, its Manager

By: 
Name: *Allen M Todd*
Title: *General Counsel & Authorized Representative*

[Signature Page to Termination of Trademark License Agreement]

ATTACHMENT 5

Selected Northstar Revised Terms Versus Terms of Commission-Approved Auction 97 Designated Entity Applications

As noted, Spectrum Bidco and Advantage Spectrum were winning bidders in Auction 97 who were awarded bidding credits after the Commission released the *Northstar MO&O*. See ATTACHMENT 5 for notes to this table (signified by letters to distinguish from footnotes to this Submission on Remand).

Northstar Resolution of FCC Issue	Northstar Original	Northstar Revised	Spectrum Bidco	Advantage Spectrum
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A. Revised the terms of the loan provided by strategic investor

Name of strategic investor (and lender)	DISH	DISH	Terrestar	US Cellular
Interest rate	12%	6%	8%	8%
Interest accrual period (i.e., cash payment not required)	5 years	10 years	5 years	10 years
Start of loan repayment	Years 6-9	End of year 10	End of year 5	End of year 10
Final loan repayment	End of year 7	End of year 10	End of year 5	End of year 10
Mandatory sweep of excess cash flow to repay loan	Yes	No	No	No
<i>Limit</i> on equipment financing & unsecured debt	\$25 million each	No	\$1 million limit	No
Limits on holding real property	Yes	No	No	No

B. Terminated the management services agreement with strategic investor

Management services agreement with strategic investor	Yes	No	No	No
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C. Terminated the trademark license agreement

Trademark license agreement with strategic investor	Yes	No	No	No
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Northstar Resolution of FCC Issue	Northstar Original	Northstar Revised	Spectrum Bidco	Advantage Spectrum
-----------------------------------	--------------------	-------------------	----------------	--------------------

D. Reduced strategic investor supermajority consent rights to reflect *Baker Creek*

Number of approval rights provided to strategic investor	19 rights	6 rights	20 rights	9 rights
Limited to the 6 rights identified in <i>Baker Creek</i>	No	Yes	No	No

E. Eliminated requirements to consult with strategic investor on business plans / budgets and get approval for deviations

Requirement to consult with strategic investor or get approval for deviations	Yes	No	Yes	Yes
---	-----	-----------	-----	-----

F. Eliminated the requirement for technology to be interoperable with strategic investor

Technology will be interoperable with strategic investor	Yes	No	No	No
--	-----	-----------	----	----

G. Expanded liquidity rights with respect to the controlling party's equity investment

Strategic investor consent for sale of equity to 3rd party	For first 10 years	For first 5 years	Always	Until buildout complete
Strategic investor ROFR / tagalong on equity sale	Yes	No	No	Yes
Sale of equity via put or other mechanism at end of year	End of year 5	End of years 5, 6, 7/8	No	End of years 5, 6, 7/8
Number of days in put window	30 days	90 days	N/A	90 days
Right to execute an IPO	After 14 years	After 7 years	No	No

H. Management fee is a “board-level” fee

(separate and apart from funding that may otherwise be available for hiring employees and operations)

The controlling party receives an annual fee	\$700,000	\$700,000	No	\$50,000
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Northstar Resolution of FCC Issue	Northstar Original	Northstar Revised	Spectrum Bidco	Advantage Spectrum
--	-------------------------------	------------------------------	---------------------------	-------------------------------

I. Reduced debt to \$500 million by converting the balance of debt into preferred stock
(see ATTACHMENT 5 for associated notes)

<u>Strategic investor's investment in the licensee</u>	DISH	DISH	Terrestar	US Cellular
1. Loan (funded amount) ^(a)	\$5,001,370,368	\$500,000,000	\$292,340,000 ^(b)	\$272,448,600 ^(e)
2. Preferred stock (pro forma March 2015) ^(a)	0	4,501,370,368	0	0
3. Equity	<u>750,183,805</u>	<u>750,183,805</u>	(est.) <u>98,899</u> ^(c)	<u>61,300,935</u> ^(g)
4. Subtotal	\$5,751,554,173	\$5,751,554,173	(est.) \$292,438,899	\$333,749,535
<u>Controlling party's investment in the licensee</u>	Northstar Manager	Northstar Manager	Jarvinian	Frequency
5. Equity (funded via party's own capital)	\$132,385,377	\$132,385,377	(est.) \$1,100 ^(c)	\$100,000 ^(j)
6. Equity (funded via loan from strategic investor)	<u>0</u>	<u>0</u>	<u>0</u>	<u>6,711,215</u> ⁽ⁱ⁾
7. Subtotal	\$132,385,377	\$132,385,377	(est.) \$1,100	\$6,811,215 ^(h)
8. License purchase price (net of bidding credit) ("Price")	\$5,883,794,550	\$5,883,794,550	\$291,810,000 ^(d)	\$338,304,000 ^(k)
9. Strategic investor loan as % of Price = (1)/(8)	85.00%	8.50%	100.18%	80.53%
10. Controlling party's equity as % of Price (excluding loan from strategic investor) = (5)/(8)	2.25%	2.25%	(est.) 0.0004%	0.03%
11. Strategic investor's capital as % of Price = (4+6)/(8)	97.75%	97.75%	(est.) 100.2155%	100.67%
12. Total capital invested in licensee = (4)+(7)	\$5,883,939,550	\$5,883,939,550	(est.) \$292,439,999	\$340,560,750 ^(f)

Notes

- a. Loan and preferred stock presentation methodology. Loan amounts are presented as the amount of the loan drawn in 2015 as reported by the parties during the Commission's Auction 97 long form application process, and such amounts do not include accrued interest. The \$4.5 billion of perpetual preferred stock in the Northstar revised structure is shown pro forma as if the debt for preferred stock exchange had been completed on March 2, 2015, the date that Auction 97 winning bidders were required to submit the balance of the net amounts of their winning bids after the auction (*see Auction of Advanced Wireless Services (AWS-3) Licenses Closes; Winning Bidders Announced for Auction 97*, Public Notice, 30 FCC Rcd 630, 632 (WTB 2015) ("*Auction 97 Winning Bidders Public Notice*")), and excluding accrued interest on the loan following that date, to facilitate a comparison with Spectrum Bidco and Advantage Spectrum. As of March 31, 2018, Northstar had \$7.37 billion of debt outstanding (including accrued interest), of which Northstar converted \$6.87 billion into perpetual preferred stock, leaving \$500 million of debt outstanding.
- b. TerreStar Corporation ("TerreStar") loan to Spectrum Bidco. TerreStar provided a \$292,340,000 loan to Spectrum Bidco. *See* 2014 AWS Spectrum Bidco Corporation, FCC Form 601, ULS File No. 0006670619 (filed Feb. 13, 2015, amended Mar. 10, 2015, Mar. 20, 2015, July 27, 2015, Nov. 10, 2016, and Nov. 18, 2016) ("Spectrum Bidco Application") at Attachment to Supplement to Exhibit D - Agreement 10 (filed Mar. 20, 2015), Amendment No. 1 to Second Amended and Restated Promissory Note between Spectrum Bidco and TerreStar, dated March 4, 2015, at Schedule II.

"Spectrum Bidco" is 2014 AWS Spectrum Bidco Corporation, an FCC-approved Auction 97 designated entity.

"TerreStar" is TerreStar Corporation, the strategic investor in Spectrum Bidco with a non-controlling 99% limited partner equity ownership interest.

"Jarvinian" is Jarvinian AWS3 LLC, the Spectrum Bidco designated entity controlling party with a 1% general partner controlling equity interest in Spectrum Bidco. Jarvinian is wholly-owned by an individual, John A. Dooley.

- c. Estimate of the dollar value of Spectrum Bidco equity capital. Spectrum Bidco disclosed that strategic investor TerreStar owned a 99% non-controlling interest in Spectrum Bidco and that designated entity general partner Jarvinian owned a 1% controlling interest in Spectrum Bidco in the "Percentage Interest" column of its public disclosure exhibit. However, the associated dollar amounts of equity invested in Spectrum Bidco are redacted in the "Capital Contributions" column of its publicly-disclosed exhibit. *See* Spectrum Bidco Application at Attachment to Exhibit D - Agreement 8 (Redacted) (filed Mar. 20, 2015), Amended and Restated Limited Partnership Agreement of 2014 AWS Spectrum Partnership, LP between Jarvinian and TerreStar, effective as of October 15, 2014, at Exhibit A ("Exhibit A"). To *estimate* the dollar value of Spectrum Bidco equity, Northstar evaluated the size of the redaction spacing in Spectrum Bidco's Exhibit A. This evaluation *suggested* that: (a) the TerreStar equity capital redacted dollar amount was sized to allow for 5 digits plus a comma, (b) the Jarvinian LP amount was sized for 4 digits plus a comma, (c) the Jarvinian GP amount was sized for 3 digits and no comma, and (d) the total Spectrum Bidco equity redacted dollar value was sized for 5 digits plus a comma. For each redacted entry, Northstar then assumed the largest number possible in the redacted space as evaluated while also maintaining consistency with disclosed percentage ownership interests. For example, if it

appeared that 5 digits and a comma were redacted in the total equity capital, Northstar assumed the redacted figure to be \$99,999 (mindful that the estimated value could be as low as \$10,000). With Spectrum Bidco total equity capital estimated at \$99,999, Northstar then estimated (a) \$98,899 for the Terrestar LP equity capital amount (*i.e.*, a 5 digit number equal to 99% of the total), (b) \$1,000 for the Jarvinian LP equity capital amount (*i.e.*, a 4 digit number equal to 1% of the total), and (c) \$100 for the Jarvinian GP equity capital amount (*i.e.*, a 3 digit number equal to “N/A” of the total). Of note, Terrestar provided a \$292,340,000 loan to Spectrum Bidco, which exceeded the Spectrum Bidco net license cost by \$530,000. This suggests that no additional equity capital was necessary for Spectrum Bidco to pay the net amount of its Auction 97 winning bids.

- d. Spectrum Bidco license purchase price. In Auction 97, Spectrum Bidco was the winning bidder for 18 licenses with an aggregate net bid of \$291,810,000 (after applying its awarded bidding credits). *See Auction 97 Winning Bidders Public Notice*, 30 FCC Rcd at 643, 648, 652, 655-56, 663, 667-68, 671, 674, 683, 687, and 690.
- e. US Cellular loan to Advantage Spectrum. US Cellular loaned \$272,448,600 to Advantage Spectrum. *See Advantage Spectrum, LP, FCC Form 601, ULS File No. 0006668843* (filed Feb. 12, 2015, amended Mar. 20, 2015, Aug. 20, 2015, Dec. 23, 2015, Jan. 8, 2016, Jan. 19, 2016, Feb. 8, 2016, Feb. 9, 2016, Mar. 21, 2016, and Mar. 31, 2016) (“Advantage Spectrum Application”) at Amendment No 1 Loan & Security Agreement Advantage Spectrum (filed Mar. 20, 2015), Amendment No. 1 to Loan and Security Agreement by and between Advantage Spectrum and United States Cellular Corporation, dated February 6, 2015, at § 1.

“Advantage Spectrum” is Advantage Spectrum, LP, an FCC-approved Auction 97 designated entity.

“US Cellular” is USCC Wireless Investments, Inc., the strategic investor in Advantage Spectrum with a 90% non-controlling limited partner equity ownership interest.

“Frequency” is Frequency Advantage, LP, the Advantage Spectrum controlling party with a 10% general partner controlling equity interest. Frequency is 100% owned by an individual, William Vail.

- f. Advantage Spectrum total capital (debt and equity). Advantage Spectrum’s total capital of \$340,560,750 is calculated by dividing Advantage Spectrum’s debt of \$272,448,600 by 80%, knowing that the partnership requires that “at all times” debt shall equal 80% and equity shall equal 20%. *See Advantage Spectrum Application at LP Agreement - Advantage Spectrum* (filed Mar. 20, 2015), Agreement Establishing Advantage Spectrum, L.P. by and between Frequency Advantage, L.P. and USCC Wireless Investment, Inc., as of August 29, 2014, § 3.1 (“Advantage Spectrum Limited Partnership Agreement”).

- Advantage Spectrum total equity capital. Advantage Spectrum’s total equity of \$68,112,215 is calculated by multiplying \$340,560,750 of total capital by 20%, knowing that equity must “at all times” equal 20% of total capital per the partnership agreement.

- g. US Cellular equity capital invested in Advantage Spectrum. US Cellular’s equity capital invested in Advantage Spectrum of \$61,300,935 is calculated by multiplying \$68,112,150 of Advantage Spectrum equity capital (per note f above) by 90%, representing US Cellular’s non-controlling ownership interest in Advantage Spectrum. *See Advantage Spectrum Limited*

Partnership Agreement at §3.1 and 3.2 (confirming 90% initial equity contribution by US Cellular).

- h. Frequency equity capital invested in Advantage Spectrum. Frequency's equity capital investment in Advantage Spectrum of \$6,811,215 is calculated by multiplying \$68,112,150 of Advantage Spectrum total equity capital (per note f above) by 10%, representing Frequency's 10% controlling ownership interest in Advantage Spectrum. *See* Advantage Spectrum Limited Partnership Agreement at §3.1 and 3.2 (confirming 10% initial equity contribution by Frequency).
- i. US Cellular loan to Frequency. US Cellular loaned \$6,811,215 to Frequency, a dollar amount that is also equal to Frequency's \$6,811,215 controlling equity investment in Advantage Spectrum. *See* Advantage Spectrum Application at Amendment No 1 Loan & Security Agreement Frequency Advantage (filed Mar. 20, 2015), Amendment No. 1 to Loan and Security Agreement by and between Frequency Advantage and United States Cellular Corporation, dated February 6, 2015, at § 1.
- j. Equity invested in Frequency, now 100% owned by an individual, William Vail. Frequency has \$100,000 of invested equity capital which is 100% owned by an individual, William Vail. *See* Advantage Spectrum Limited Partnership Agreement at Schedule I; Advantage Spectrum Application at Stock Purchase Agreement b/w DiNardo & Vail (filed Feb. 7, 2016) Stock Purchase Agreement between Will Vail and Allison Cryor DiNardo, dated as of December 31, 2015. As noted above, Frequency also borrowed \$6,811,215 from US Cellular, a dollar amount that is also equal to Frequency's \$6,811,215 equity investment in Advantage Spectrum.
- k. Advantage Spectrum license purchase price. In Auction 97, Advantage Spectrum was the winning bidder for 124 licenses with an aggregate net bid of \$338,304,000 (after applying its awarded bidding credits). *See Auction 97 Winning Bidders Public Notice*, 30 FCC Rcd at 640-734.